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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1884.

No. 153.

ISAAC N. PEARCE AND ANDREW J. KUYKENDALL, APPELLANTS,

vs.

CHARLES I. HAM.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF ILLINOIS.

FILED NOVEMBER 9, 1881.

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1 *Placita.*

Pleas in the Circuit Court of the United States of America for the Southern District of Illinois, held at the city of Springfield, in said District, before the Hon. Samuel H. Treat, District Judge of said District, and in the absence of the Honorable Thomas Drummond, Judge of the Seventh Judicial Circuit, Presiding Judge of said Court, *pro tempore*, sole Judge of said Court, on Wednesday, the 14th day of September, in the year of our Lord one thousand eight hundred and eighty-one, and of the Independence of the United States of America the one hundred and sixth year.

J. A. JONES, *Clerk.*

CHARLES I. HAM
vs.
ISAAC N. PIERCE and ANDREW J. KUYKENDALL. } In Chancery.

2 SOUTHERN DISTRICT OF ILLINOIS, *ss:*

Charles I. Ham, a citizen of the State of Ohio, complainant in this suit, brings this his bill, by Messrs. C. K. Davis, O. A. Harker, and Samuel P. Wheeler, his solicitors, against Isaac N. Pierce and Andrew J. Kuykendall, defendants, who put in their place Wm. J. Allen, Esq., their solicitor, at the suit of complainant in the bill aforesaid.

SOUTHERN DISTRICT OF ILLINOIS, *ss:*

Be it remembered that heretofore, to wit, on the 6th day of December, in the year of our Lord one thousand eight hundred and seventy-three, came the said complainant, by his solicitors, and filed in the clerk's office of said court his bond for costs, bill and exhibits, which are in the words and figures following, to wit:

Cost Bond.

Circuit Court of the United States of America, Southern District of Illinois, *ss:* January Term, A. D. 1874.

3 CHARLES I. HAM
vs.
ISAAC N. PIERCE & ANDREW J. KUYKENDALL.

We do hereby enter ourselves security for costs in this cause, and acknowledge ourselves bound to pay, or cause to be paid, all costs which may accrue in this action, either to the opposite party or to any of the officers of this court, in pursuance of the laws of this State and of the United States.

Dated this sixth day of December, 1873.

H. E. AVERILL.
C. I. HAM.

(Endorsed:) Filed December 6th, A. D. 1873. J. A. Jones, clerk.

Bill.

UNITED STATES OF AMERICA, *Southern District of Illinois:*

In the Circuit Court of the United States for the Southern District of Illinois. January Term, A. D. 1874.

To the honorable the judges of the circuit court of the United States, sitting in the district aforesaid:

Humbly complaining showeth unto your honor, your orator, Charles I. Ham, a citizen of the State of Ohio, that on the 5th day of August, A. D. 1868, one Joseph K. Frick, entered into and executed a contract with the county court of Johnson county, in the State of Illinois, for the erection of a court-house at Vienna, the county seat of said county, a copy of which contract your orator herewith files, marked Exhibit "A," and make the same a part of this his bill.

Your orator would further show unto your honor that afterwards, to wit, on the 9th day of September, A. D. 1869, the said Joseph K. Frick, by and with the consent and approval of the county court of said Johnson county, assigned the said contract to your orator and one Isaac N. Pierce, who your orator charges were copartners under the firm name of Ham & Pierce, and your orator herewith files a copy of said assignment, and marks the same Exhibit "B," and makes the same a part of this his bill. And your orator
5 charges that by said assignment the said firm of Ham & Pierce, and their assigns respectively, became entitled to all and singular the rights and privileges heretofore held, had, or possessed, by the said Joseph K. Frick, in and to said contract marked Exhibit A, and he further charges that it was the right of the said Ham & Pierce, upon the completion of the said court-house, in accordance with the terms and conditions of said contract, and the acceptance thereof by the county court, to receive any unpaid balance there might still be due on said contract from the said county court.

Your orator further shows and charges that he and the said Isaac N. Pierce were equal partners in said enterprise, and that it was mutually understood and agreed between them that they should bear the losses, if any, equally, and divide the profits, if any, in the same proportion.

Your orator would further show unto your honor that, after the said assignment, the said firm of Ham & Pierce proceeded to the erection of the court-house, as contemplated by said contract, and the providing of materials therefor, under the direct superin-
6 tendence and supervision of your orator, and had expended about the sum of one thousand dollars, when the said firm of Ham & Pierce, finding they could advantageously, and with large profit to themselves, sublet said work to one Niles L. Wickwire, an experienced, competent, and responsible builder, they did, on or about the fifteenth day of November, 1869, employ the said Niles L. Wickwire to erect and complete the said court-house in all things in compliance with, and according to, the terms, conditions, and provisions of said original contract. That by the terms of their contract with said Wickwire, he was to receive twenty-seven

thousand and five hundred dollars in Johnson county bonds, as provided for in said original contract, leaving to your orator and the said Pierce a surplus or profit of ten thousand eight hundred and fifty-seven dollars, upon the completion of the said building and the acceptance thereof by the county court of said Johnson county.

Your orator would further show unto your honor, and he charges the truth to be, that the said Wickwire, with whom the said
7 firm of Ham & Pierce contracted for the completion of said house, did build and complete the same in all respects in accordance with said original contract; and after the completion thereof was accepted by the county court of said Johnson county as a compliance with said contract.

Your orator would further show unto your honor and charge that the said Wickwire was fully paid for his work and materials in accordance with the contract made between your orator and the said Pierce, of the firm of Ham & Pierce of the one part, and the said Wickwire of the other part, and that after such payment there remained due upon the said original contract, marked "A," to the firm of Ham & Pierce by virtue of said assignment, the sum of ten thousand eight hundred and fifty-seven dollars from the said county of Johnson, one-half of which your orator charges in equity belongs to him.

Your orator would further show unto your honor, and he charges the truth to be, that at the time of making the said contract between the said Frick and the said county of Johnson, one Andrew
J. Kuykendall became the security for said Frick, and exe-
8 cuted a bond as such to the county conditioned for the faithful performance by said Frick of his said contract, and for the purpose of indemnity to said Kuykendall, or for some other purpose of which your orator is not advised, the said Frick constituted said Kuykendall, his attorney-in-fact, and as such he acted, making the said assignment to the said firm of Ham & Pierce, and generally acting in his behalf, said Frick being a non-resident of the State of Illinois; but your orator will believe that, upon the execution of said assignment to your orator, and the said Pierce, by the said Kuykendall, in the name and for the said Frick, that he would cease to act under said authority, and in no way interfere with your orator's rights in the premises; but so it is, may it please your honor, and your orator charges the truth to be that after the completion and acceptance of the said court-house by the county court of Johnson county aforesaid the said Kuykendall entered into some arrangement or agreement with the said Pierce if not for the express purpose of defrauding, wronging, and annoying your orator, well calculated to do so, by which the said Kuykendall,
9 claiming to act under his authority aforesaid from the said Frick, should receive from the county court of Johnson county the remaining county bonds due on said original contract, and make some division thereof between them, and pay your orator nothing, which said agreement your —— charges was and is corrupt, wrongful, and fraudulent.

And your orator here shows that he cannot, with certainty, state

what the said agreement was; that said Pierce at one time stated and pretended that he received from said Kuykendall all of the bonds he was entitled to, as one-half; at other times that he took just what Kuykendall was willing to give, but asks that such answer may be made as fully to show this matter.

Your orator would further show and charge that on or about the 19th day of January, 1871, in the absence of your orator, the said Andrew J. Kuykendall and the said Isaac N. Pierce, your orator's partner, as aforesaid, went before the county court of said Johnson county, and the said Kuykendall, claiming to be the agent and attorney-in-fact for said Frick, well knowing that said Frick
10 had no interest whatever in said contract or the balance due thereon, and in the presence and hearing of the said Pierce, who acquiesced in his said unlawful and fraudulent conduct and acts *to*, he, too, well knowing that said balance belonged to the firm of Ham & Pierce, demanded that said bonds, then due, be paid to him, fraudulently and falsely representing to said court that they could recognize no one but Frick in the transaction, he then and there well knowing the truth to be that the court had consented to said agreement, and that the same was entered upon the journal of the proceedings of said court. That by means of the said false and fraudulent representations, and also by reason of the acquiescence of his said partner therein, the said court did, on the said day, deliver to the said Andrew J. Kuykendall all the bonds remaining due upon said contract, to wit, ten thousand eight hundred and fifty-seven dollars, *of* for value, and the said Andrew J. Kuykendall then and there received the same, and your orator expressly charges that in equity he became and was a trustee for the firm of Ham & Pierce, and that in equity he received the said bonds as such trustee,
11 and must account to the said firm therefor as such trustee.

That your orator has frequently applied to the said Isaac N. Pierce to settle their said partnership business, and also to the said Andrew J. Kuykendall to pay over your orator's portion of said bonds, but they utterly refuse so to do; and your orator further states that he is informed and believes, and upon such information and belief charges the truth to be, that said Pierce has received a considerable portion of said bonds from said Kuykendall, and that it was done in furtherance of their unlawful and fraudulent conspiracy and confederating together, whereby your orator's portion or the major part thereof might go to said Kuykendall, which actings and doings your orator charges are wholly without excuse and contrary to equity and good conscience.

In tender consideration whereof, and forasmuch as your orator is wholly remidiless in a court of law, and can only have adequate relief in a court of equity, where matters of this character are properly cognizable and relievable, your orator prays that Isaac N. Pierce and Andrew J. Kuykendall, both of whom reside in Johnson
12 county, Illinois, may be made parties defendant to this bill.

That the ordinary process may issue herein, returnable according to law, and that they may each full, true, direct, and perfect answers make to all and singular the matters and things herein

stated and charged, under the rule of this honorable court in this behalf, but not under oath, their respective oaths thereto being hereby expressly waived.

That an account may be taken by the court of what is due to your orator by virtue of said copartnership and the said copartnership enterprise, and that the said Isaac N. Pierce may by decree of this court be required to pay the same to your orator, in money or Johnson county bonds, if not converted, within a short day, to be fixed by your honor, and that in default of so doing your orator may have execution of said decree.

That the said Andrew J. Kuykendall may by decree be declared and held to be a trustee for the said firm of Ham & Pierce in receiving said bonds, and held to a strict account in respect thereto, and required to pay the same over under the direction of the court if not converted by him, with such interest as he has collected;
13 and, if converted, that he be required to pay the value of said bonds, together with the interest on such sum, in like manner to such person as the court may designate, and that your honor will make all needful and proper orders in this cause, and grant unto your orator all such other and further relief as to equity belongs and to your honor shall seem meet, &c.

CHARLES I. HAM,
Complain.
CRESSA K. DAVIS,
O. A. HARKER &
SAMUEL C. WHEELER,
Compt's Sol's.

(Indorsed:) Filed December 6th, A. D. 1873. J. A. Jones, clerk.

14 *Exhibit "A" to Bill.—Contract.*

Articles of agreement made and entered into this fifth day of August, 1868, between Joseph K. Frick, of the city of Cairo, State of Illinois, of the first part, and Jason B. Smith, county judge, and James Hogg and Mark Whitaker, associate justices of the county court within and for the county of Johnson and State of Illinois, in the capacity and forming the county court within and for said county, of the second part, witnesseth: Said party of the first part, for and in consideration of the covenant and stipulation hereinafter mentioned to be done and performed by said party of the second part, the county court of Johnson county, aforesaid, and their successors in office, does hereby, for himself, his heirs, executors, administrators, and assigns, covenant, promise, and agree to and with the said party of the second part that he, the said party of the first part, shall and will, well and sufficiently, build and finish in good workmanlike manner a court-house building for the said county of Johnson, in the State of Illinois, said court-house to be built on the center of the public square in the town of Vienna, agreeably to the plans and drawings and specifications this day filed in the office of the county clerk of said county of Johnson, plans and draw-
15 ings mentioned as follows: No. 1, basement; No. 2, principal

story; No. 3, 2d story; No. 4, longitudinal section on line A B; No. 5, cross-section on line C D; No. 6, end elevation; No. 7, front elevation, except the changes in said plans and drawings specially noted in the specifications filed with said clerk, which said plans and drawings are made a part of these articles of agreement, and shall and will find, furnish, and provide all necessary materials of such kind, qualities, and description as shall be fit and proper and sufficient for the completing and furnishing the same; and that he will fully complete and furnish said court-house in all respects in a good and workmanlike manner, ready for delivery on or before the first Monday in September, (1870) one thousand eight hundred and seventy, said house to be seventy feet long from the north to the south, and fifty feet wide, east and west; the basement story to be built of stone two feet above the surface of the ground on the west side and the west half of the center; the north and south walls two feet above the surface of the ground; the E. ½ of the basement story to a level with its basement story—to a level with it; the balance of the walls to be constructed of well-burned bricks; the first story of the house above the basement to be fourteen feet and two inches high, to be divided off in rooms, halls, stairways, passages, and
16 *and* apartments as laid off and described in the drawing No. 2, principal story aforesaid; the second story to be nineteen feet high, and to be divided off into rooms and apartments, furnished and finished off, as laid off and described in said plain or drawing No. 3, second story. There shall be two fire-proof vaults for the preservation of the records of said county, one in the county clerk's office, and one in the circuit clerks office, each three feet by seven feet in size, finished — workmanlike manner, for the depositing the records &c. Each of said offices, steps, windows, doors, stairs, chimneys, &c., all to be made and finished in good workmanlike manner, agreeable to said plans, drawings, and sections, and specifications, this day filed as aforesaid. It is further agreed by and between said parties that Mr. A. J. Henry of Vienna, Ills; be, and he is hereby, appointed superintendent of the work for and on the part of the said party of the second part, the said party of the second part reserving the right and privilege, at any time by order made by them on the record of the county court for good and sufficient reasons, to suspend or remove said superintendent, or any other by them appointed, and also in case of the death or removal of such superintendent, and appoint such other responsible and competent person as the
17 said court may select to be superintendent of the work; and the said party of the second part, in consideration of the premises, hereby covenant and agree to — with the said party of the first part that they will pay unto said party of the first part, for building said court-house, materials, &c., and in full of the same, the sum of thirty-eight thousand three hundred and fifty-seven dollars, in manner following to wit: Nine thousand five hundred and eighty-nine $\frac{25}{100}$ dollars in Johnson county bonds, bearing ten per cent. interest, due in six years after the date thereof, redeemable at the option of the of the county court, at any time before due; at the time of the sealing and delivery of the contract, nine thousand five hundred and

eighty-nine $\frac{25}{100}$ dollars in similar Johnson county bonds, when the whole is half done; nine thousand five hundred and eighty-nine $\frac{25}{100}$ dollars in money, similar Johnson county bonds at the option of the said county court when the work is three-fourths done, and nine thousand five hundred and eighty-nine $\frac{25}{100}$ dollars in lawful money or similar Johnson county bonds, or a part of each, at the option of the said county court, when the work is completed, provided that in all cases the said party of the first part, before he shall be entitled to demand or receive payment for the work, or any part thereof, done under this contract, &c., except the first payment made at the
18 time of closing this contract, &c., shall produce the said party of the second part, or their — in office a certificate under the hand of the superintendent of the work, showing that the materials furnished and the work done by the said party of the first part is in accordance with the plans, drawings, and specifications above referred to, and the respective provisions thereof.

1st. And it is further agreed by and between the parties aforesaid that, together with said plans and drawings of said building, the specifications as altered and amended in writing, signed by said parties, and this day filed in the county clerk's office of said county, are hereby made a part, and shall be considered and construed a part, of this contract.

2d. That all work exhibited or provided to be done in the plans or drawings, and not mentioned in the specifications herewith connected, or *vice versa*, shall be executed and performed in a like manner as if the same were fully mentioned and described in each thereof respectively, without extra charge.

3d. The superintendent of the work shall, at his discretion, reject any work or material which he may deem to be not in accordance with the plans, drawings, and specifications herewith con-
19 nected, or either of them, or with the provisions hereof, to be altered at the expense of the said party of the first part.

4th. That in case the said party of the first part shall refuse or neglect to supply a sufficiency of materials, or workmen, the said party of the second part shall have the right to provide the necessary material and workmen after three days' notice in writing given to the said party of the first part, and in such case the expense of all materials, and the cost of the work so provided by the said party of the second part, shall be deducted from the amount herein agreed to between to the said party of the first part.

5th. That in order to prevent all disputes or disagreements between the parties aforesaid in relation to the performance hereof on the part of the said party of the first part, it is hereby expressly agreed and understood that the said party of the first part in the performance hereof shall strictly adhere to the plans, drawings, and specifications herewith connected, and in case any difference of opinion shall arise between the parties aforesaid as to the quality or quantity of the work or material, or any other matter connected with the work or the performance of the covenants and agree-
20 ments, the work herein contained on the part of the said party

of the first part, the decision of the superintendent shall be final and binding on all parties.

6th. That the said party of the second part shall not in any manner be answerable or accountable for any loss or damage that shall or may happen to the said work or portion thereof, or any of the materials or other things used or employed in furnishing or completing the same, providential accident only *accepted*; that should the said party of the second part neglect or fail to make the payment stipulated to be made by this contract to the said party of the first part, when the same shall become due and payable according to the due progress of the work, by the terms of the contract, then and in that case the said party of the first part may, at his option, suspend work on the house, and the said party of the second part shall be liable for all damages said party of the first part may sustain in consequence of such neglect or failure.

In witness whereof, said parties have hereunto set their hands and seals, at Vienna, this 5th day of August, A. D. 1868.

JAS. K. FRICK. [L. S.]
J. B. SMITH, [L. S.]
Co. Judge.
JAMES J. HOGG. [L. S.]

Signed, sealed, and delivered in the presence of—
B. S. SMITH.

21 Know all men by these presents, that we, Joseph K. Frick, of the city of Cairo, and A. J. Kuykendall, of the county of Johnson and State of Illinois, parties of the first part, are held and firmly bound unto Jason B. Smith, county judge, and James J. Hogg and Mark Whitaker, associate justices, and together forming the county court within and for the county of Johnson and State of Illinois, party of the second part, in the penal sum of twenty thousand dollars, for which payment, well and truly to be made to the said party of the second part and their successors in office, all bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this fifth day of August, A. D. 1868.

Whereas the above-bounden Joseph K. Frick has entered into a contract this day with the said party of the second part to build in the town of Vienna, in Johnson county, in the center of the public square, a court-house for the use of said county of Johnson, said court-house to be built and completed according to the terms of said contract, the specifications of which are this day filed in the office of the clerk of the county court of said county of Johnson,
22 and by which contract and specifications the said above-bounden Joseph K. Frick is to fully finish and complete said court-house on or before the first Monday in September, 1870; and said parties of the second part agree to pay the said Joseph K. Frick the contract price or sum for the building of said court-house, the sum of thirty-eight thousand three hundred and fifty-seven dollars,

one-fourth of said contract price payable in advance, one-fourth when the work is half completed, one-fourth when the work is three-fourths completed, and the remainder when said house be fully completed.

Now, the condition of the above obligation is such that if the said Joseph K. Frick shall, as soon as may be, and within a reasonable time, commence the building and construction of said court-house, and shall, with all diligence and reasonable expedition, proceed with the work according to the terms and conditions of said contract, and shall, in due time, according to the spirit, intention, and terms of the said court-house contract, *shall* hasten and build and finish the same within the time limited for the completion thereof by said
23 contract in a good, substantial, and workmanlike manner, agreeable to said contract and the plans and drawings and specifications this day filed in the office of the clerk of the county court of Johnson county, then the above obligations to be null and void; otherwise of full force and virtue.

JOSEPH K. FRICK.
A. J. KUYKENDALL.

Signed, sealed, and delivered in the presence of—
L. W. FERN.

Specifications

For the materials and work necessary in building a court-house at Vienna, Johnson, Illinois, according to the accompanying plans, elevations, sections, and detail drawings, as furnished by Mariam & Co., form of and basement and principal story, 2d story, longitudinal section, cross-section, end, elevation and front elevation.

The drawing and such writings, interlineations, figures, and details as may be upon them are to be considered a part of and illustrating these specifications in the plans. Dark blue designates stone; red, brick; brown, yellow wood, which is to be the standing joice for the different contractors to execute from. Contractors are requested and expected to carefully examine the contents of
24 the specifications, the principal portion as well as the written, as everywork of the printed is to remain in full force unless it is erased.

Duties of Contractors.

He shall be held strictly to execute such work and to use such materials as hereinafter described, and in all cases when the drawings are figured, the figures must be taken by him as the given dimensions without reference to what they may measure according to the scale. He will further submit as to the character of the material used and the work done to the judgment of the superintendent, and to procure from him all necessary interpretations of the designs and plans and all necessary certificates regarding his payments on the contract. Also, for all additions or deductions which may result from changes of designs or plans.

All payments made on work during its progress on account of the contract, or extra work, shall in no case be construed as an acceptance of the work executed, but the contractor shall be liable to all the conditions of the contract until the work is finished and completed. The contractor must have some competent person on the work to receive instructions and see where his particular work
25 is required. Subcontractors will not be recognized. The contractor, his foreman or clerk, being bound in all cases to remove all improper work or materials upon being directed to do so by the superintendent any time and all times within forty-eight hours after receiving written notice to that effect from the superintendent; but if the contractor, after having been directed as above to remove the same, should refuse or neglect to do so, he shall not only suffer a deduction from the contract price of the difference in value of proper and improper work and materials, but shall also be liable for all damages of whatever nature or kind that result from such cause, the above provisions to apply in the same way to all damages of whatever nature or kind that may result from such cause, the above provisions to apply in the same way to all materials or work used, made, or fixed without the knowledge of the superintendent, and not approved by them.

The county court, under the direction of the superintendent, shall be at liberty, if in his judgment the case require, to replace the same and make good every part at the cost of the charge of the contract.

26 In case of delay by the contractor in providing and delivering the requisite material, or in the advancement of the building or work, or deficiency of the workmen, or for misconduct, inattention, or inability, the county court shall be at liberty, after the superintendent has given to or left for the contractor with his foreman or clerk three days' notice, in writing, to provide at the expense of the contractor all such materials and employ such number of workmen at such wages as the superintendent shall think proper, and the costs and charges incurred shall be retained out of the contract amount, and by a reservation from the estimates from time to time, or amounts thereof which may be due or recoverable as liquidated damages. The county court reserves the right, by conferring with the contractor, to alter or modify the designs, and to add or diminish from the contract price, and the contractor, by and with the consent of the county court, to be at liberty to make any alterations in the plan for construction, detail, or execution described by the drawings and specifications without invalidating or rendering void the contract; and in case of any difference in expense and
27 addition to or abatement from the contract, amount shall be made in the ratio or proportion such work may bear to the whole contract work agreed to be performed, and the same to be determined as before mentioned, the county court being bound in all case- to recognize the acts of the superintendent, not only as requires extra work, but also as to the sufficiency of the designs, materials, and workmanship, no alteration or extra work to be done except upon the price being agreed upon beforehand

and indorsed upon the contract; and in case no agreement could be effected between the county court and contractor in regard to the price for alteration or modification as above referred to, the decision of the superintendent is to be binding and conclusive. A. J. Hewey declared to be superintendent of the work for the county court.

His duties will consist in giving on demand such interpretations, either in language, written, or drawing, as in his judgment the nature of the work requires, having particular that any and all work done and *and* materials used for the work be such as is hereafter described, in giving on demand any certificates that the contractor may be entitled to and in settling all deduc-
28 tion or additions to the contract price which may grow out of alterations of designs, or change of plan, after the same is under contract; also determining the amount of damage which may accrue from any cause, and particularly to decide on the fitness of all material used and work done. It is not incumbent upon the superintendent to notify the contractor to attend to and have in readiness his own work and the requisite materials at such times as the progress of the building may require them; if the contractor does attend to his part of the work, and have his portion of the material and work in readiness as it may be wanted to work into the building, he will be held accountable for all delays and damages in consequence of any such neglect.

All the designs, plans, details, elevations, and sections of each and every kind that the contractor may have received must be preserved and returned to the superintendent before the final certificate is given, and the county court, their legally authorized agent, re-agents, must be notified by the contractor that he is ready to
29 have a settlement, so that if the county court or parties interested have any bills to file or statements to make, he or they can do so before the superintendent makes his final certificate to adjust between the parties, the superintendent's opinion, certificate, report, and decision to be binding and conclusive.

Dimensions of the Building Represented by and Figured on the Drawings.

Heights: Basements, 2 feet above the ground on the west side of the building, and other sides level with it.

Principal,	"	"	14	"	"	2.
Second	"	"	19	"		

The building is to be erected in a thorough and wormanlike manner, and must be finished throughout as hereinafter described, and anything shown by the drawings and not particularly reserved or described, which is necessary to complete the entire work of the building, is to done at the cost of the contractor, notwithstanding such omission.

Mason's Work—Excavation.

For and after using so much of the earth as shall be needed in filling up around the walls, drains, &c., &c., the balance or surplus,

if there should —, shall be used in filling up around the out-
30 side of the building, and the yard or the street in front, as shall be directed by the superintendent; excavate the grounds for the foundation walls a sufficient depth to be below front and make the foundation firm and substantial, and excavate only the east half of the basement story, so that it will form a cellar eight feet deep, notwithstanding what the basement plans show.

Double Stone Work.

The stone walls of every kind are to be of good quality of quarry stone, flat-bedded, and of nearly equal thickness, the walls to be carried to the heighth and of the thickness marked or shown on plans and sections; the interior of the wall must be filled perfectly solid with stone and morter, all laid in good lime morter, well bedded, bounded and faced on both sides; maks the top and sides perfectly straight and level.

The basement walls to be carried to a heighth level with the west side, well supplied with ventilating windows, as shown on the plans and sections as near as possible, owing to the unevenness of the ground.

Dimension Story.

Lay the foundations or footings of the walls with stone not less than figured on section and eighth inches, or as figures, thick,
31 except where otherwise specified, or shown on plans or sections, well and evenly bedded in the earth, and laid in good lime morter.

Cut Stone.

All the cut stone of the various kinds, such as window sills, steps, ashbox, qu-ines, &c., is to be good quality and even color, and that known as the sandstone, and must be free from seams, breaks, or imperfection of every kind, and such as is found in the vicinity of Vienna, Johnson county, Illinois. All cut stone are to be properly set, and work requiring cramp to be thoroughly secured with such made of iron $\frac{1}{4}$ by $\frac{1}{2}$ inches and to be set in lead finish, and set all cut stone of every description shown or described on the plans, platforms, buttresses, qu-ines plastered with caps, the basement and steps to be fine bush hammered, with $1\frac{1}{2}$ inch drawed margin, and $2\frac{1}{2}$-inch level rustic, all stone above the basement, and to be rubbed work, quoines two-inch level rustic, 2 inch rustic level stone floors to vaults below.

Brick Work.

All the brick to be used in the walls to be good, hard, well burned bricks, and use none outside or where exposed to damp or frost that will not stand the weather
32 They must be laid wet with flushed solid joints, leaving interstices or empty spaces in the walls. For thickness of walls, see plans and sections.

Build brick discharging arches to take the weight of walls for the limits; all doors, windows, or openings, in wall fire-proof vaults.

Build all walls as shown on plans and sections of same, the doors to be of wrought iron with iron frames outside, outside door ¼ inch boiler iron, fast mouldings one fold, inside doors two folds.

No. 14 iron vestibule lined with No. 14 iron, five bolts to outside doors, Sargent lock; lock worth $56.

The brick work must be well bedded and flushed up, tied in every fifth course, and worked in sound and regular bound, fill in and lock close with sound brick, and good morter at the lock of all ash-lining or facing of stone work, and point up close to all sills, capings, casings, and projections, bed carefully and solidly all windows and door frames, and underpin all sills with suitable morter, provide the needful materials of every description, and *and* cover the work from the weather at necessary times; find all the scaffolding
necessary for the performace of the work, and resume the
33 same when the work is completed, attend the other machines when required to back in and fill up properly behind their work, all brick for facing the exterior walls and chimney tops must be of the best assorted hard-burned brick, the joints neatly struck; all the outside brick walls and chimney tops; openings for vault doors to be 3 feet wide by 7 feet 3 inches high; the basement of vaults to be built of stone, and well and sufficiently provided with openings for ventilation.

Chimneys.

Build all chimneys as indicated on the plans by the brick, and closed; fill the joints with mortar, and in no case allow less than 6 inches of brick-work between timbers, or any wood, and the smoke-flues all to be smoothly plastered inside their entire length, and on the outside where they pass through the floors and other wood-work; chimney tops to be finished with a neat cornice and loose, if so indicated by the plans, and the flues left entirely clear from all refuse material when finished.

Timbers.

In each room adjoining the chimneys there must be tim-
34 bers set in the proper manner, and closed with tin caps; special pains must be [taken] that the breach or shafts in room be laid plumb straight and true; the caps must have a flange to fit into the inside of the timbers so as to make them tight.

Anchors.

Furnish and set all anchors necessary to connect all the walls with the timber work, said anchors to be made of iron ¼ by ½ inches; attach one to each joice every eight feet; all ashler and other stone work to be thoroughly anchored to the brick walls with iron anchors.

Lath and Plastering.

The inside of the entire building throughout, in all the stories above the basement, to be lathed in the best manner, with No. 1 seasoned lath, and the same to be plastered as follows:

With two coats of brown mortar and one coat of one-third of plaster of paris and two-thirds first white lime; the court-room to have a frescoed cornish, as shown on section, and a suitable large ornamental centre; all other rooms plain, ceiling to be in suitable
ironeye to be placed in the center of the court-room ceiling,
35 for the purpose of suspending chandelier of $\frac{3}{4}$-inch iron; no morter is to be made of fresh, quick lime, coarse, sharp sand, and for each barrel of lime a bushel of good sound plastering hair is to be used; the lime to be well slacked and screened; the morter is to be put on in heavy coats to $\frac{7}{8}$ inch; grounds made straight, and in every respect finished in a thorough manner. Should the hard finish show fire cracks, stains, or blisters, or the lime in the brown mortar slack so as to break through the surface, it will be condemned as bad work. Every part of this work to be well done.

Clearing out Rubbish.

The mason must clear out all boards, planks, horses, ladders, mortar, dirt, and all other loose rubbish from all rooms in the several stories, and carry off such rubbish as particularly belonging to or made by the mason on the completion of his contract, from time to time, if necessary, during the progress of the work, if so directed by the architects or persons superintending.

The county court to give possession of the ground on or before the first day of September, 1868.

36 The building to be entirely completed on or before this first Monday in September, 1870.

Damages.

And in order to secure the execution of the work in the manner and at the time specified, it is hereby distinctly declared that the damages arising from nonfulfillment of the contract, as regards time, shall be ten dollars each and every day the work remains unfinished, and which sum of damages shall be deducted from the contract price.

Carpenters' Work.

All timbers, girders, timbers, joists, truss-beams, partitions, studs, roof, piazzas, balconies, &c., &c., must be prepared, framed, and constructed according to the drawings and sections, the particular kinds of materials and their dimensions must be as described and figured on plans and specifications. All the floor joists must be properly sized and jointed, crowning on the top edge. All framing and other rough timber must be of good, sound, merchantable poplar or oak lumber.

Joist.

	Basement story,	——	joists and	places,	—	inches	from	centre.
	Principal	"	2 x 14	"	"	16	"	"
37	Second	"	2 x 14	"	"	16	"	"
	Attic	"	2 x 6	"	"	16	"	"

Rafters, as shown and figured on sections, placed 2 feet from centre; wall plates, as shown and figured on sections; for size of tim-

ber, as construction of roof, see sections; the ceiling of the court-room to be paneled, as shown on section.

Bridging.

All joist having from 9 to 12 feet between bearings must have one row of cross-bridging, made of good, sound stuff 2½ by 1½ inches, well fitted at the angles; all having from 12 to 18 feet must have two rows as above; all having from 18 to 25 feet must have three rows as above; and in all cases put in as soon as the joist are leveled and thoroughly spiked with two tenpenny nails at each end.

Headers & Trimmers.

All headers and trimmers must be put in double thick, thoroughly framed and spiked together, leaving all openings of sufficient size for all finish of stairs and chimneys, skylights, and scuttles, and in no case to allow the timbers to come within two inches of the brick of any smoke-flue.

Wooden Lintels.

38 All openings of any kind in brick or stone to have wooden lintels behind the stone or iron caps or arches, in no case less than six inches thick by the required width; and in all cases where not a backing for an arch or cap, must be wide enough to cover the thickness of the wall.

Partition Studs.

All — and window studs must be set double and trussed overhead of all openings in all substantial manner, partitions to be sized and joined where required to make a true surface to a straight edge; all angles of rooms must be made solid, and in no case allow studding to be set so as to allow lath to pass through the angles; all round corners to be furred for lathing horizontal in every case; all 9 to 12 feet stories to be bridged once; all over that, twice; all studding must be 2 x 6, unless otherwise shown, and all placed 16 inches from centre.

Furring.

Bearing strips and bond timber, leaving strips 2 x 4 on all walls for the end of joists to rest upon, all proper bond land timbers and wooden bricks of every description necessary for the proper execution of the work to be furnished; and

39 Anchors & Stirrups.

Diagonal anchors of 2 x 4 scantling, floors in all cases where the joist lie parallel with the walls to be anchored.

These anchors must not be less than eight feet in length, set in flush with the top of joist, and must be placed one on each pier or wall. Iron stirrups for hoisting or stairways.

Roof.

The carpenter shall frame and construct, according to the drawings, sections, and specifications, in the most thorough manner, and fix strongly all requisite strapped stirrups, stirrups, and other irons;

corner the roof with good, sound, seasoned poplar joist, the joist made close and well nailed; cover the roof with the best roofing tin, well soldered in all the joints, and warranted tight; to be iron straps and stirrups, as shown on sections of roof, of $\frac{3}{4}$ by 3-inch iron, $\frac{3}{4}$-inch bolts; make perfectly water-tight around all chimneys, skylights, scuttles, ventilators, hips, valleys, gutters, fire-walls, or wherever the roof of one part joins the perpendicular walls of other. In all cases use 4 pounds of sheet lead 24 inches behind the chimneys,
40 and wherever lead is the most applicable it must be used; always put in where the bricks are laid.

Water Cutters.

Made on the roof of best X tin, placed in the cornice, as per plan, to be conducted from thence to the ground in two six inches tin pipes, which must be well secured to the building with hooks.

Contractors to furnish the contracting mason in all cases when the roof is of felt or of composition, and when the same is required, as sufficient amount of sound, seasoned 2 by — scantling, free of sap, to build in the walls surrounding the roof to be covered, in order that the felt of the roof may be properly secured at the edges.

Cornice.

Exterior cornice to extend around the entire building, and to be of wood, the same constructed as per detail drawings, sections, and elevations, *cuppold;* build all balconies, porches, piazzas, veran-ahs, observatories, steps, per drawing, &c.

Build and construct a cupola in all respects as shown on el-vations, plans, sections.

Windows.

41 All windows in the several stories for this building must be of the forms, styles, and dimensions as marked on plans, elevations, sections, and details, or as hereinafter described; all sashes must be $1\frac{3}{4}$ inches thick, and these having circular light in centre of head, except mullion windows, to have an iron plate crossing the joint of the sash to strengthen the same.

All to be double hung with weights, cords, and $2\frac{1}{4}$-inch turned axle pulleys in the usual manner; to have cast-iron caps to all openings instead of stoneware called by the plan.

Blinds & Shutters.

All inside shutters to be $1\frac{1}{8}$ inches thick, of best seasoned *with* pine, fitted with best inside fastenings to all the windows in the several stories; furnish and hang suitable fourfold inside shutters to all windows as above, 5″.

All floors in the several stories to be $1\frac{1}{4}$-inch oak plank 4 inches narrow; well-worked flooring, except when otherwise specified, thoroughly seasoned and laid in the best manner, well nailed through the face; all uneven and rough spots made smooth; all floors to be defended with at least $2\frac{1}{2}$ inches of morter, as per sections,

42 with at least 2 inches space between the deafening and the floors.

Grounds.

Put up grounds for the finish all windows, doors, bases, casings, etc, before plastering; those *those* on wooden partitions, $\frac{5}{8}$ by 2 inches; those on brick or stone walls, $\frac{3}{8}$ by 2 inches, and allow no cases or bases to be put up until the last coat of plastering is on and suitably dry, except when other specified.

Stairs.

Build all stairs, as per plan and section, in the best and most substantial manner, as per detailed drawings, or as hereinafter specified, of which be wrought from the most thoroughly seasoned materials of every kind, treads and risers tenoned and ground together, both front and back; balusters dovetailed, and wall strings glued to treads and landings. All treads and risers housed into wall strings, wedged, and any glued thoroughly; those on principal stairs leading to 2d story to have $1\frac{3}{4}$-inch treads, inch bases, ask $1\frac{3}{4}$-inch strings, 12-inch octagonal newel, sunk, panneled, 7 toad-back
43 rail, newel, &c.; balusters of black walnut; all other steps in first and second stairs to be of ash $1\frac{3}{4}$ inches thick, all to have nosings & seated stairs leading to cupola, and basement to be of pine and $1\frac{3}{8}$ inches thick.

Doors.

All doors in the building must be made of the best white pine (except where otherwise specified), thoroughly seasoned, and of the sizes marked on plans, all fitted in their respective places, hung and trimmed complete, with suitable hinges, locks, bolts, and screws, etc., and all provided with good and suitable threshold $\frac{5}{8}$ inch thick.

For particular forms and thickness see details, full size, or as hereinafter *after* described; all outside entrance doors and those leading from hall to court-room in 2d story to be of two thickness of $1\frac{3}{8}$-inch thick; all to be 4 panells each where not otherwise shown; all to be double-faced, heavy-railed mouldings; details to be given of doors.

All doors in the building must be made of the best white pine, except where otherwise specified, thoroughly seasoned, and of sizes marked in the plans, all fettered in their respective places, hung and trimmed complete, with suitable hinges, locks, bolts, screws,
44 etc., and all provided with good and suitable threshold $\frac{5}{8}$ inch thick.

For particular forms and thickness see details, full size, or as hereafter described; all outside entrance doors and those leading from hall to court-room in 2d story to be of two thickness of $1\frac{3}{8}$-inch lumber; all others to be $1\frac{1}{4}$ inches thick; all to be four panels each where not otherwise shown; all to be double-faced, heavy-raised mouldings, details to be given of doors.

Finish.

All door and window casings, bases, etc., in the several stories to be the styles, forms, and dimensions as per detailed drawings or as hereinafter described; all cases, bases, etc., to lap one inch over the ground and fit perfectly to the plaster, the whole to be done in the most substantial and workmanlike manner, with thoroughly seasoned white pine, No. 1, clear, details to be furnished for all door and window finish, and to be of 3-4, &c., five member, base moulded. The court-room to be wainscoted around as high as the bottom of the windows, with cupping connected with the window-sills, the railing around the bar and judges' seat to have 8 inches octa-
45 gon newels, 5½ inches toad-back rail, arc 3 inches octagon balusters, all of black walnut; the plate, steps, clerk's and sheriff's desks and seats constructed as shown on plans and sections, seats to have scrawl arms and moulded caps, caps and arms of black walnut, the backs of the seats and wainscoating to be of clear narrow bedden and ceiling.

Trimming.

All locks, bolts, knobs, latches, trimmings, and fastenings of every description to be of the best kinds and qualities for their respective places, and must be properly fixed to all doors, sashes, blinds, shutters, etc., in a workmanlike manner.

All sash that are hung with weights to be secured with sash-locks; all that are not hung will have sash-springs; all outside folding shutters will have shutter bars and knobs to each separate set of flaps, all of which will be silver-plated in the rooms where plated door trimmings are; all others to correspond with the trimmings specified for other portions of the finish; all doors hung with three 5 x 6 inch loose joint butts each, and the outside and main court-room doors trimmed with Davenport's and Mattery's 3-tum-
46 bler front door mortice locks; all other doors to have Davenport and Mallery's No. 86 five-inch mortise locks and latches, brass face plates, bolts, and keys, 4 keys to each lock, all to have hinges, knobs, escutcheons; all windows to have good heavy brass sash-locks, with bronzed knobs; all shutter-knobs to be bronzed; the carpenter must clear out all lumber, lumber benches, blocks, chips, shavings, dirt, and all other loose rubbish from all rooms in the several stories, sweep all floors clean, and carry off all rubbish as particular belonged to or made by the carpenter or joiner on completion of his contract.

Painters' Work—Outside.

Paint all wood, tin, and iron work with three coats best quality white lead and boiled linseed oil, and tint the same as may be directed by the superintendent of county court. All work to be thoroughly cleaned before each [coat] of paint is put on, and all nail-holes and other imperfections well filled with putty before the second coat is put on. Paint all outside windows and door blinds with 3 coats best lead and oil and 2 coats best Paris green.

Inside.

47 Paint all inside wood work, floors excepted, with 3 coats best white lead and boiled linseed oil, the last coat to be colored for graining, mixed with turpentine; all work to be thoroughly cleaned and well sand-papered down before each coat of paint is put on, and all nail-holes and other imperfections to be well filled with putty made of white lead before the second coat is put on. Paint the entire building throughout, including the basement, as above.

Graining.

Grain all wood in the entire inside of the building; except the basement, to be of grained oak, the doors dark, the other work light; the outside of all outside door-frames grained dark oak in the best manner, and varnish the same two coats best coach varnish.

Glazing.

American City best brown glass, well bedded, fastened *fastened*, and puttyed, and to be thoroughly cleaned with dry whitening, and to be free from all waves, blisters, etc.

Changes made in the following specifications, and the amount of each deduction for each one of the contract price.

48 1st. Steeple on cupola made like the steeple on cupola on Cairo court-house. Contract price reduced for change ---------- $660 00

Changes the stonework of the above basement story to be rusticated brickwork. Contract price reduced for change ---------- 1,634 00

3d change. Make hall of floors level with entrance of doors. Contract price reduced for change ---------- 13 00

Leaving out staining, and tuck painting outside bush walls and chimney tops. Contract price reduced for change-- 136 00

Total amount of reductions ---------- $243 00
Amount bid by Jas. K. Frick ---------- 408 00

Am't of reduction agreed upon at time of closing contracts- 2,443
Contract price ---------- 38,357

The above specifications, signed by us, the parties, this 5th day of August, 1868.

JAS. K. FRICK, *Contractor.*
J. B. SMITH,
Judge of Co. Court, J. C., Ills.
JAMES J. HOGG, *Associate.*

Ordered by court, that court adjourn till court in course.
J. B. SMITH, *Judge.*

The following changes are agreed to without adding to or diminishing from the contract price, to wit:

49 First. The stone in the basement above the foundation is to be hammer dressed masonry, laid in regular courses; the window caps in the basement story may be one whole stone or three arch stones, the contractor may elect; there will be no protection pits for windows or doors.

Second. All steps for four entrances to be cut draft on the corners, balance of the surface to be crannied work; the wainscots for the same to be cut and dressed in same manner as the steps for the main entrance.

Third. The stone work of all corners and front elevations including the belt around the building to be painted brick work, imitation of stone.

Fourth. The eight double windows shown on the east and west elevation are to be constructed single windows instead.

Fifth. The ceiling in the court-room to be level surface with stucco cornice in the corners, and a suitably large ornamental centre with an iron eye for suspension of chandelier.

Sixth. The general plan of the cornice to be executed according to the plans and draft, except the panel work and moulding, which may be simplified in some of their details.

50 Seventh. The size of the vaults to be increased from three feet to seven feet by eleven feet.

Eighth. Width of hall running north and south increased from seven feet and eight inches to ten feet.

This agreement made in open court on the ninth day of September, eighteen hundred and sixty-nine.

JAMES B. SMITH, *Judge.*
JAMES J. HOGG,
Associate J. P.
JOS. K. FRICK,
By A. J. KUYKENDALL,
His Att'y.

(Indorsed:) Filed December 6th, A. D. 1873. J. A. Jones, clerk.

Exhibit "B" to Bill. (Assignment.)

Know all men by these presents, that I, Joseph H. Frick, by A. J. Kuykendall, my attorney, in consideration of the sum of one dollar to me paid in hand by Chas. I. Ham and Isaac N. Pierce,
51 under the firm name of Ham and Pierce, do hereby assign to the said Ham and Pierce, and their assigns, all my interest in the above-entitled contract between Joseph K. Frick, party of the first part, and the county court of Johnson county, Illinois, party of the second part, and every clause, article, right, or privilege therein contained; and the said party of the first part further agrees and covenants to pay over to said Ham and Pierce the sum of nine thousand five hundred (9,500) dollars, in lawful money or Johnson county bonds, bearing date December first, eighteen hundred and sixty-eight.

JOSEPH K. FRICK,
By A. J. KUYKENDALL,
His Attorney.

(Endorsed:) Filed December 6th, A. D. 1873. J. A. Jones, clerk.

And afterwards, to wit, on the same day, and in the year last aforesaid, there was issued out of said clerk's office a chancery subpœna in said cause, directed to the marshal of said district to
52 execute, which said subpœna, together with the return of the marshal thereon, is in the words and figures following, to wit:

Subpœna.

UNITED STATES OF AMERICA, } ss:
Southern District of Illinois, }

The United States of America to Isaac N. Pearce and Andrew J. Kuykendall, Greeting:

We command you, and every of you, that you appear before our judges of our circuit court of the United States of America for the southern district of Illinois, at Springfield, in said district, on the first Monday in the month of January next, to answer the bill of complaint of Charles I. Ham, this day filed in the clerk's office of said court, in said city of Springfield, then and there to receive and abide by such judgment and decree as shall then or thereafter be made, upon pain of judgment being pronounced against you by default.

To the marshal of the southern district of Illinois to execute.
53 Witness the Hon. Nathan Clifford, Senior, Associate Justice of the Supreme Court of the United States of America, at Springfield aforesaid, this sixth day of December, in the year of our Lord one thousand eight hundred and seventy-three, and of our Independence the ninety-eighth.

[L. S.] J. A. JONES, *Clerk.*

Memorandum.

The above-named defendants are notified that unless they shall enter their appearance in the clerk's office of said court, at Springfield aforesaid, on or before the day to which the above writ is returnable, the complainants' bill will be taken against them as confessed and a decree entered accordingly.

J. A. JONES, *Clerk.*

Marshal's Return.

I hereby appoint James W. Abbit my special deputy to execute this writ.

Dec. 6, 1873. E. R. ROE,
U. S. Marshal.

STATE OF ILLINOIS, *Johnson County:*

DECEMBER THE 9TH, A. D. 1873.

I have served the within writ upon the within-named de-
54 fendants, Isaac N. Pearce and Andrew J. Kuykendall, by

reading and by leaving with each of them a true copy of the same this 9th day of December, A. D. 1873.

E. R. ROE,
U. S. Marshal,
By JAMES W. ABBITT,
Special Deputy.

(Endorsed:) Filed January 5, A. D. 1874. J. A. Jones, clerk.

And afterwards, to wit, on the 2d day of January, in the year of our Lord one thousand eight hundred and seventy-four, came the defendants, by their solicitors, and filed in said clerk's office their separate answers in said cause, which said answers are in the words and figures following, to wit:

Answer of Def't, I. N. Pierce.

UNITED STATES OF AMERICA, *Southern District of Illinois:*

In the Circuit Court of the United States for the Southern District of Illinois.

CHARLES I. HAM
vs.
55 ISAAC N. PIERCE & ANDREW J. KUYKENDALL. } Bill in Chancery.

The answer of Isaac N. Pierce, one of the defendants, to the bill of complaint filed against him and his co-defendant, Andrew J. Kuykendall, by Charles I. Ham.

This respondent, saving & reserving to himself the benefit of all just exception to said bill, and to the many erroneous statements therein contained, for answer thereto, or to so much and such parts thereof as he is advised it is material for him to make answer unto, answering, says:

That it is true, as he believes, that, on the 5th day of August, A. D. 1868, one Joseph K. Frick entered into a contract with the county court of Johnson county, Illinois, for the erection of a court-house at Vienna, the county seat of said county; and this respondent says it is also true that said Frick, on or about the 9th day of September, A. D. 1869, by A. J. Kuykendall, his attorney, assigned said contract to complainant and respondent; but this respondent says that it is not true that said assignment was made "by and with the con-
56 sent and approval of the county court of said Johnson county," but, on the contrary, insists that said assignment was made without the consent of said court, and denies that the court ever afterwards recognized the same.

Respondent states that at the time said Frick, by his attorney, assigned said contract to complainant and respondent, complainant was idle and pecuniarily embarrassed by the suspension of work on the Cairo & Vincennes railroad, and representing himself to respondent as a practical mechanic and builder. Respondent, who

was then a merchant, but without experience or knowledge theoretically as a builder, was induced to form a partnership with complainant, hoping that by uniting the advantages of paying for material and labor going into the construction of said court-house in merchandise with the practical experience and mechanical skill and personal supervision of the work as it progressed, of complainant some profit might be realized from said contract. Respondent consented to accept said assignment as a partner of said complainant. Respondent states that after accepting said assignment he proceeded to collect material and have some excavating done preparatory to the construction of said court-house; that the material and labor cost about the sum of $523.87, every cent of which was paid by respondent out of his own private means, and respondent, in this connection, states that complainant never did expend one dollar or labor one hour under said court-house contract, or in any manner as the partner of respondent under the contract so assigned to them by said Frick. This respondent states that it is also true that he and complainant sublet said court-house contract, on or about the 15th day of November, 1869, to one Niles S. Wickwire, who was in all things to complete said court-house in the manner and within the time contemplated by said original contract (with said Frick), at and for the sum of $27,500 in Johnson county bonds; but respondent states that as an inducement held out to said Wickwire by complainant and respondent to enter into said court-house contract, as above said, complainant and respondent promised to advance said Wickwire, on said contract, $5,000 in money to enable him to commence work on, and this money was to be so advanced within a short time from the making of said contract, so that said Wickwire might proceed to make arrangements for and purchase material, &c., for said court-house. Respondent states that about this time said complainant went away from this portion of Illinois, and never returned until long after said court-house was completed and accepted, as hereinafter mentioned. Respondent further answering states that soon after said contract was made by the firm of "Ham & Pierce" with said Wickwire the latter visited Vienna to obtain the $5,000 so to be advanced to him on the said court-house contract by complainant and respondent as aforesaid, and complainant being absent, and his whereabouts unknown to the respondent, although complainant had promised to see to raising or providing for the $5,000 for Wickwire, respondent was greatly embarrassed as to what to do, but begged time of said Wickwire, and endeavored to provide the money and to communicate with complainant about the matter, but failed in accomplishing either result. Finally, some time in the early part of March, 1870, the said Wickwire positively refusing to go to work under his contract with complainant & respondent unless said advance of $5,000 was paid him at once, and respondent being unable to get said sum of money or to hear from complainant, was compelled to, and did, rescind, annul, and cancel said contract so made by and between complainant and respondent under the firm name of "Ham & Pierce" of the one part and the said Niles Wickwire of the other, the said contract

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of re-cis-ion and cancellation having been made by said Wickwire for himself and respondent for the firm of "Ham & Pierce." Respondent denies most positively that he was influenced by fraud, or any wrongful or improper motive, in rescinding said contract, but regretted the necessity for so doing, honestly believing at the time that if complainant had been what he represented himself to be, a practical mechanic and builder, and had remained and provided, or assisted in providing, for the $5,000 to be advanced to said Wickwire as aforesaid, money could have been made by said "Ham & Pierce" under either the contract assigned to them as aforesaid or their contract with said Wickwire; but respondent had no experience in
60 building, but little means, and honestly, in the best of faith, rescinded the contract as aforesaid with Wickwire, and surrendered the written memorandum thereof for destruction to A. J. Kuykendall, and afterwards, because of being unable to proceed alone and of the continued absence of complainant, rescinded, cancelled, and wholly annulled the contract with said Frick by his attorney, assigning to "Ham & Pierce" his said Frick's contract with the county court of Johnson county, Illinois, for the -rection of the said court-house at Vienna. And this terminated respondent's connection with said court-house contract as a partner of complainant, or contractor, or sub-contractor, for the building of said court-house.

And respondent here distinctly denies all fraud, combination, or conduct of whatever character intended or calculated to injure, defraud, or annoy complainant in connection with said court-house contract. Respondent is satisfied that said complainant's grievances are entirely fanciful and without reality; but, if any one is to blame in the premises, it is complainant alone, who seems to have abandoned respondent, his contract, and everything else in this
61 portion of the State for a series of years, and now seeks to substitute an unhealthy imagination for facts.

Respondent understands it to be true that, after the cancellation and re-cis-ion of the contract of assignment to Ham & Pierce by Frick, and the contract by which Ham & Pierce sublet said work to N. L. Wickwire, the said Frick, by his agent and attorney, A. J. Kuykendall, did contract with said Wickwire for the construction of said court-house; that it was built by said Wickwire under said last-mentioned contract, and has been accepted by the Johnson county court; but respondent denies that he was a party to said last-mentioned contract, or had anything to do with the same, further than subsequent arrangement with said Wickwire, paying his orders in merchandise to his employees, and also, by subsequent arrangement with Andrew J. Kuykendall, assisting him to negotiate Johnson county bonds, which he represented to respondent he had stipulated should realize to said Hickwire ninety cents on the dollar.

62 Respondent denies entering into any arrangement with his co-defendant, Kuykendall, to defraud, wrong, or injure complainant, or that he ever made or had made any division of the bonds his co-defendant may have received from the county court as the agent of Frick on the court-house contract. Said Kuykendall,

upon the cancellation of the contract by which the original contract of Frick with the county for building the court-house was assigned to Ham & Pierce, agreed to pay respondent back the $523.87, so paid out by respondent as aforesaid; and respondent was also retained by his co-defendant, Kuykendall, to assist him negotiating the bonds as aforesaid, and on the account of these two items, and perhaps some other not now recollected, of a purely business, private character, between respondent and the said Kuykendall, the latter may have, and, as respondent recollects, did, pay to respondent some of the bonds so obtained by him from Johnson county aforesaid, but the amount thereof is not now recollected by respondent.

And now, having fully answered said bill, or so much thereof as he is advised it is material for him to answer unto, respond-
63 ent prays to be hence dismissed, with his reasonable costs and charges in this behalf most wrongfully expended, &c.

ISAAC N. PIERCE,
By W. J. ALLEN, *His Sol.*

(Endorsed:) Filed January 2, 1874. J. A. Jones, clerk.

Answer of Def't, A. J. Kuykendall.

UNITED STATES OF AMERICA, *Southern District of Illinois:*

In the Circuit Court of the United States for the Southern District of Illinois.

CHARLES I. HAM
vs.
ISAAC N. PIERCE & ANDREW J. KUYKENDALL. } Bill in Chancery.

The answer of Andrew J. Kuykendall, one of the defendants, to the bill of complaint filed against him and his co-defendant, Isaac N. Pearce, by Charles I. Ham.

This respondent, saving and reserving to himself the benefit of all just exception to said bill, and to the many erroneous
64 statements therein contained, for answer thereto, or to so much and such parts thereof as he is advised it is material for him to make answer unto, answering, says:

That it is true, as he believed, that on the 5th day of August, A. D. 1868, one Joseph K. Frick entered into a contract with the county court of Johnson county, Illinois, for the erection of a court-house at Vienna, the county seat of said county.

This respondent says that it is not true, as stated in said bill, that the said Joseph K. Frick, "by and with the consent and approval of the county court of said Johnson county," on the 9th day of September, A. D. 1869, assigned said contract to said complainant and one Isaac N. Pierce.

This respondent admits that said assignment of said contract was made by said Frick to said complainant, Ham, and said Isaac N. Pierce on or about said 9th day of September, 1869, and that said Ham & Pierce were partners, as charged in said bill, but denies that

the county court of Johnson county ever consented to or approved of said assignment, but, on the contrary, states that said court
65 never in any manner recognized said assignment, and always insisted that the original contract with said Frick, whose security for its faithful performance in the sum of twenty thousand dollars your respondent had become, was its reliance, and that it would look to said Frick's bond on which respondent was security, as aforesaid, for security that the said court-house was built within the time, and in the manner specified in said contract. Respondent states that he is informed that complainant, some time after taking said assignment from said Frick of said contract to Ham & Pierce, had the clerk of the county court of Johnson county, Illinois, copy the same into the records of proceedings of said Johnson county court, but that this was done at a time when said court was not in session, was wholly unauthorized by said court, and was never subsequently recognized by it.

Respondent says that so far as he knows at the time said assignment of said contract was taken by said Ham & Pierce they were *they were* understood to be partners, and to have agreed to
66 share alike in the profits or losses of the enterprise.

This respondent states that after said assignment the said firm of Ham & Pierce, as respondent is informed and believes, under the superintendence of Isaac N. Pierce, commenced doing work on said court-house contract by excavating for the foundation of the said court-house, and providing some stone to be used in said foundation, the entire sum expended in work and materials being, as respondent is informed, $523\frac{87}{100}$, which sum was paid by said Isaac N. Pierce out of his own means, and that in point of fact said Ham did not perform one day's labor, or pay out one dollar in the performance or attempted performance of said contract. This respondent is further informed, and believes it to be true, that said Ham & Pierce on or about the 15th day of November, 1869, sublet said work to one Niles S. Wickwire, who was in all things to complete said court-house, according to the terms, conditions, and provisions of said original contract.

67 This respondent is informed that said Wickwire was to complete said court-house according to the terms of the original contract made by the county of Johnson with Frick, for the sum of $27,500 in Johnson county bonds, but that he required, and it was agreed by and between him and Ham & Pierce, that said Ham & Pierce were to advance to him $5,000 in money before he commenced work under said contract so sublet to him by said Ham & Pierce to enable him (Wickwire) to commence work on said court-house.

Respondent, further answering states that he is informed and believes that said Ham, about the time he & Pierce sublet said work to said Wickwire, left this portion of Illinois, and it may be this State permanently, having become greatly embarrassed pecuniarily on account of his connection as contractor in the building of the Cairo and Vincennes railroad, and did not, to the knowledge of respondent, return to this portion of the State till long after the com-

pletion of said court-house. Respondent further states that in
68 February or March, 1870, the said Wickwire made one or two trips from Cairo, Ills., his then place of residence, to Vienna, to get from Ham and Pierce the $5,000, so to have been by them advanced to him, under the contract by which said work was sublet to him, and enable him to commence work on said court-house, but the said Ham was absent as aforesaid, and the said Pierce did not have the money to advance, whereupon said Wickwire told respondent Pierce and others that he would not proceed to do anything under his contrart to build said court-house till the $5,000 before mentioned was advanced to him.

Respondent felt interested to the extent of his liability as security of said Frick on his bond in the said sum of $20,000, well knowing that the county court of Johnson county, Illinois, would hold him responsible on the same, and would bring suit thereon if said court-house was not built within the time and in the manner contemplated by the original contract with Frick.

Respondent, further answering, says, that upon the failure
69 of said Ham & Pierce to pay to said Wickwire the said $5,000 in money in advance, as they had agreed to, the said contract between them and said Wickwire, by which said court-house work was sublet to said Wickwire as aforesaid, was cancelled, annulled, and wholly rescinded; that this contract of re-cis-ion & cancellation was made by & between said Isaac N. Pierce for himself and his copartner, the complainant, C. I. Ham, and the said Wickwire for himself, some time in the month of March, A. D. 1870; that upon said contract of cancellation & re-cis-ion being so made as aforesaid, the said Pearce delivered up to respondent for destruction the written contracts, of which he and the said Wickwire each held a copy, so made by and between said Ham & Pearce, of the one part, & said N. L. Wickwire, of the other, by which said Wickwire was to construct said court-house so originally contracted to be built by said Frick, and said Wickwire afterwards delivered to respondent his copy of said contracts. Respondent thinks he destroyed the copy surrendered to him by Wickwire, but may have retained the
70 copy surrendered by said Pearce. Respondent, further answering, states that upon the re-cis-ion of the said contract by which said Ham & Pearce sublet said work to said Wickwire, respondent, as the agent of said Frick, sublet said work to said N. L. Wickwire, at and for the sum of $27,500, in Johnson county bonds; said work to be done and performed by said Wickwire in the same manner & within the same time contemplated by the original contract of said Frick with Johnson county; but in respondent's contract with said Wickwire as aforesaid respondent obligated himself to take said county bonds and cash them and account to said Wickwire in money for the sum of ninety cents for each and every dollar of said $27,500 in Johnson county bonds so to be given to said Wickwire for the completion of said court-house as aforesaid.

Respondent here distinctly denies all knowledge or belief of any fraud on the part of said Pearce in cancelling said contract with said Wickwire, respondent believing that said Pearce was unable to

pay over the $5,000 as aforesaid, and that he had no intention of over reaching, or in any manner defrauding said Ham or any
71 other person, and so far as respondents connection with said cancellation and re-cis-ion is concerned, he unqualifiedly denies any purpose or intent to injure or defraud said Ham, but, on the contrary, respondent was anxious for said Ham & Pearce to be connected in some way with said works, regarding said Ham as a practical mechanic, and said Pearce as a man of good business qualifications; but respondent says that said Isaac N. Pearce, for himself and complainant, abandoned the said work on said court-house entirely, alleging as a reason his inability from the want of means and experience to carry the same on in the absence of said Ham, and released to respondent, as agent of said Frick, all right or claim of whatever nature or character under said assignment before respondent as such agent contracted with said Wickwire as aforesaid. And respondent here distinctly states that said Wickwire never did commence or perform any work upon said court-house under his contract with said Ham & Pierce, but that he did commence and complete said court-house under and by virtue of his contract with
72 respondent, as the agent of said Frick as aforesaid.

Your respondent admits that said Wickwire, under his contract with respondent as agent for said I. K. Frick, completed said court-house, and that the same has been accepted by the county court of Johnson county, Illinois, but respondent positively denies that there is or ever was due anything to said Ham & Pierce for or on account of any work done or performed by said N. L. Wickwire. Your respondent admits that he was constituted the agent of said Frick, and that he was security on his bond, as stated in said bill, but he distinctly denies that he ever interfered or sought to interfere with any of the rights of complainant, or that he ever entered into any arrangement or agreement with Isaac N. Pierce, or any other person, for the purpose of defrauding or wronging or annoying complainant or any other person.

Respondent made no division with said Pearce, or any other one, of bonds in equity belonging to complainant or the firm of Ham & Pe[illegible]e, nor did respondent ever have in his possession or control any such bonds. Respondent states that, in pursuance of his agreement with said Wickwire aforesaid, he did negotiate
73 said Johnson county bonds to the amount of $27,500, and account for and pay over the proceeds of same to said Wickwire at the rate in money of ninety (90) cents on the dollar, in fulfillment of his contract with said Wickwire, while respondent was compelled to sell much the larger portion of said bonds as low as eighty cents on the dollar, and realized ninety cents to the dollar on but a portion of the said $27,500 in bonds, he became obligated to negotiate for said Wickwire at the said rate of ninety cents on the dollar as aforesaid. Respondent states that after he was compelled (in order to protect himself as security on said Frick's bond) to make the contract with said Wickwire, by which respondent, as agent as aforesaid, was to negotiate said bonds at the rate of ninety cents on the dollar as aforesaid, he employed said Isaac N.

Pearce to assist him in making said negotiations, and said Pearce, who was then in the mercantile business, also became paymaster for many of the employees of said Wickwire, where he was constructing and building said court-house, and by this means only did respondent ever have any business
74 connection with said Pearce in relation to said contract or court-house. Respondent states that he did, as agent, receive from the county court of Johnson county, Illinois, after the court-house was completed and occupied, whatever amount of bonds was due under said original contracts, and afterwards in settling with said Pearce for his services rendered respondent as aforesaid, and on account of what said Wickwire owed said Pearce as aforesaid. Respondent did let said Pearce have some of said bonds, the amount not now recollected; but respondent distinctly denies that he ever did so for or on account of the said contract between said Ham & Pierce with said Wickwire, except the sum of $\$523\frac{87}{100}$ paid out by said Pearce for stone material and excavation as aforesaid, which sum respondent repaid to said Pearce after the cancellation of said contract between Ham & Pearce with said Wickwire as aforesaid, or for or on account of the assignment made by said Frick to said Ham and Pearce of the original contract, (both of which were cancelled and rescinded as aforesaid,) but in pur-
75 suance of another, a distinct and subsequent arrangement made by respondent, as agent as aforesaid, with said Pearce, after respondent's contract with said Wickwire.

Respondent denies that he holds any bonds, monies, funds, or effects in his hands as trustee for said Ham & Pearce, or for said complainant, or that he is indebted to him on any account whatever.

Respondent generally and specifically denies ever having directly or indirectly done anything to embarras- said firm of Ham & Pierce, or prevent them from completing their contract of building said court-house under the assignment of the same to them by said Frick, or complying with their contract, by which they sublet said work to said N. L. Wickwire, the latter contract being a much better one for respondent's principal than the one respondent was afterwards compelled to make with said Wickwire, in order to save himself from liability as security on said bond of said Frick as aforesaid.

And now having answered said bill, or so much and such parts thereof as he is advised it is material for him to answer, prays
76 to be hence dismissed with his reasonable costs and charges in this behalf, most wrongfully expended, &c.

ANDREW J. KUYKENDALL,
By WM. J. ALLEN, *His Sol.*

(Endorsed:) Filed January 2, 1874. J. A. Jones, clerk.

And afterwards, to wit, on the 2d day of February, in the year last aforesaid, came the complainant, by his solicitor, and filed in said clerk's office his replication to the defendants' answers in said cause, which said replication is in the words and figures following, to wit:

Replication.

UNITED STATES OF AMERICA, *Southern District of Illinois,* } ss:

In the Circuit Court of the United States for the Southern District of Illinois. Jan'y Term, 1874.

CHARLES I. HAM
vs.
77 ANDREW J. KUYKENDALL and ISAAC N. PIERCE. } In Chancery.

The replication of the said complainant, Charles I. Ham, to the several answers of Andrew J. Kuykendall and Isaac N. Pierce, herein.

And the said complainant, for replication to the said several answers of the said defendants, says: That the matters and things in so far stated and set forth, in so far as the same deny the *the* allegations and charges in complainant's bill, are not true, but that his said bill is true, as he stands ready to maintain and prove, wherefore he prays as by his said bill he has already done.

CHARLES I. HAM,
Complainant.

O. A. HARKER,
C. K. DAVIS,
SAMUEL P. WHEELER,
Compl't's Sol'rs.

(Endorsed:) Filed Feb'y 2d, A. D. 1874. J. A. Jones, clerk.

78 And afterwards, to wit, on Wednesday, the 6th day of January, at the January term of said court, in the year of our Lord one thousand eight hundred and seventy-five, the following proceedings were had in said court, and entered of record in said cause, to wit:

Order for Hearing Cause.

CHARLES I. HAM
vs.
ISAAC N. PIERCE *et al.* } 3852. In Chancery.

This day comes the parties, by their solicitors, and by consent this cause is continued and set for hearing on the 4th Wednesday of next June term of this cause.

And afterwards, to wit, on the 8th day of July, in the year last aforesaid, came the parties, by their solicitors, and filed in said clerk's office their stipulation in said cause, which said stipulation is in the words and figures following, to wit:

79 *Stipulation as to Contents of Contract.*

UNITED STATES OF AMERICA, *Southern District of Illinois.*

In the United States Circuit Court of said District.

CHARLES I. HAM
vs.
ISAAC N. PEARCE and ANDREW J. KUYKENDALL. } In Chancery.

It is hereby agreed that in the event that a certain contract entered into between Ham & Pearce, of one part, and N. L. Wickwire, of the other part, for the construction of a court-house in Johnson county, of or about the date of Dec. 1st, 1869, is not produced on the hearing of this cause by the def'ts, the following statement shall be taken as the substance of it, to wit:

That Wickwire was to build said court-house for $27,300, in 10 per cent. Johnson county bonds, according to the plans and specifications and contract agreed upon between Joseph K. Frick and the county court of Johnson county. The condition of the contract as to receiving the bonds from Ham and Pearce were the same as those set forth in the contract between said Frick and said county
80 court, and the only difference between the two contracts was that the one between Wickwire and Ham and Pearce specified the price to be $27,300 in bonds, and the other $38,357 in bonds.

Witness our hands and seals, this 26th day of June, 1875.

CHAS. I. HAM. [SEAL.]
I. N. PEARCE. [SEAL.]
A. J. KUYKENDALL. [SEAL.]

(Endorsed:) Filed July 8, 1875. J. A. Jones, clerk.

And afterwards, to wit, on Friday, the 23d day of July, at the June term of said court, in the year last aforesaid, the following further proceedings were had in said court and entered of record in said cause, to wit:

Order on Submitting Cause.

CHARLES I. HAM
vs.
ISAAC N. PIERCE *et al.* } 3852. In Chancery.

81 This day come the parties, by their solicitors, and submit this cause for hearing to the court, upon briefs to be hereafter filed.

82 (COMPLAINANT'S TESTIMONY.)

Testimony of Niles L. Wickwire.

The deposition of Niles L. Wickwire, of the city of Cairo, county of Alexander, and State of Illinois, a witness of the lawful age, produced, sworn, and examined upon his corporeal oath, on the 23d

day of June, A. D. 1875 (commencing at the hour of 9 o'clock a. m. of said day), at the office of Samuel P. Wheeler, in the city of Cairo, in the county of Alexander, and State aforesaid, by me, John Q. Harmon, a commissioner for the circuit court of the United States for the southern district of the State of Illinois, in pursuance of the notice hereto attached, said Niles L. Wickwire having been duly sworn and examined as a witness in a certain suit and matter in controversy now pending and undetermined in the said circuit court of the United States for the southern district of Illinois, wherein Charles I. Ham is plaintiff and Isaac N. Pearce and Andrew J. Kuykendall are defendants, in behalf of the said plaintiff.

The said NILES L. WICKWIRE, being first duly sworn by me as a witness in the said cause previous to the commencement of his examination to testify the truth as well on the part of the plain-
83 tiff as the defendants, in relation to the matters in controversy between the said plaintiff and defendants, so far as he should be interrogated, testified and deposed as follows, to wit:

Int. 1st by plaintiff. Please state your name, age, residence, and occupation.

Ans. My name is Niles L. Wickwire; am 41 years of age; reside at Cairo, Illinois; am a carpenter and builder by occupation.

Int. 2. State whether you are acquainted with the parties to this suit.

Ans. I am acquainted with both parties; I have known them since 1869.

Int. 3. State under what circumstances you became acquainted with Mr. Ham.

Ans. It was in regard to building a court-house at Vienna, Johnson county; I first met him in Cairo, Illinois; he had the plans with him at Cairo for the court-house; I made an estimate on it; I made a contract with Mr. Ham to build the court-house; all the conversation as to building the court-house was with Mr. Ham; after
84 we had completed it Mr. Ham sent for defendant Pearce, who came to Cairo from Vienna and signed the contract.

Interrogatory 4. Mr. Wickwire, you may state, as a matter of fact, whether or not the contract was executed in duplicate.

Ans. Could not say as to that. I had a contract. I don't recollect whether it was executed in duplicate or not.

Interrogatory 4. What have you done with that contract?

Ans. As soon as I got through with it I either sent it to Vienna or destroyed it. I am pretty confident, however, that I sent it to Mr. Pearce, at Vienna. I promised to send it to Mr. Pearce when I got through with it, and am almost certain I done so.

Interrogatory 5th. Have you seen that contract since, or do you now know where it is?

Ans. I have not; nor do I know where it now is.

Interrogatory 5½. By the terms of that contract, what were you to receive for building the court-house?

85 Ans. I was to receive in the neighborhood of $27,400 dollars.

Interrogatory 6th. By the terms of the contract, how were you to be paid for the building of the court-house?

Ans. I was to be paid in Johnson county bonds at 90 cts. on the dollar.

Interrogatory 6½. Please state whether these bonds that you were to receive were to be on their face $27,400.00.

Ans. Mr. Ham guaranteed me that I was to realize ninety cents on the dollar for the bonds, and that was the contract I made.

Interrogatory 7th. Was that guarantee expressed in the contract?

Answer. I don't think it was; but that was the understanding between Mr. Ham, Mr. Pearce, and myself.

Interrogatory 8th. Do you recollect who wrote the contract?

Ans. It was written by Mr. Peabody.

Interrogatory 9th. State, Mr. Wickwire, whether you completed that court-house, and whether you did it under the contract with Ham and Pearce.

Ans. Mr. Ham and I had an understanding that he would
86 assist me in placing those bonds, and expressed himself that
he would assist me in placing those bonds, and expressed himself that he would be on the ground most of the time and lend his assistance as much as he could in building the court-house; and as I was not much about Vienna, I had an agreement with him that we should meet there some time about New Year in regard to commencing the work. I complied with my part of the contract in every respect and completed the court-house.

Interrogatory 10th. Did you build the court-house under the terms of the written contract made with Ham and Pearce?

Ans. Yes; everything in the written contract was carried out.

Interrogatory 11th. When did you complete the court-house?

Ans. I think it was in the month of February, 1871.

Interrogatory 12th. What time did you receive the first payment for work on the court-house?

Ans. I received no payment directly. I gave orders on Mr. Pearce
from time to time as the work progressed. He acted as
87 cashier in paying out money for the work. I received no
direct payment of any considerable amount until the work was completed. The balance then due me I received in bonds.

Interrogatory 13th. What amount in bonds did you receive as a balance due you on the completion of the court-house?

Ans. I think I got about 7 thousand dollars in bonds—something like that amount.

Interrogatory 14. Who did you make this final settlement with?

Ans. I made it with Mr. Pearce and Mr. Kuykendall; they were the men I dealt with all the time.

Interrogatory 15. This 7,500 in bonds—what disposition did you make of them?

Ans. I sold them after keeping them some four or five months.

Interrogatory 16. What price did you get for them?

Ans. I got ninety cents on the dollar for them.

Interrogatory 17. Have you any recollection of Mr. Pearce going to Indiana while the court-house was in process of erection?

Ans. I have.

88 Interrogatory 18. For what purpose did he go there? If you know, please state.

Ans. He told me he was going there for the purpose of seeing Mr. Ham in regard to some business about the court-house.

Interrogatory 19. What did he state to you; was the business relative to the court-house he went there for?

Ans. He seemed to think that Mr. Ham had no interest in the court-house, and he went there to have some understanding with him about it.

Interrogatory 20. You may state, Mr. Wickwire, how far the building of the court-house had progressed at the time he went there.

Ans. I think the brickwork was about half up.

Cross-examination by def'ts:

1st cross-interrogatory by def't. This contract that you made in November, 1869, for the building of the Vienna court-house was made, was it not, with Ham and Pearce as partners?

Ans. Yes.

2d cross-int. Do you recollect when the court-house was to

89 be completed under the terms of the contract?

Ans. I think it was to be completed in December, 1870.

3d cross-int. You may state whether under this contract with Ham and Pearce they were to negotiate any portion of the bonds or furnish you any money prior to commencing the work.

Ans. There was nothing specified, only in a verbal understanding between myself and Mr. Ham.

Mr. Ham agreed to be there and assist in negotiating the bonds; he said he knew some party in Springfield who he thought would take some of the bonds, and could get five thousand dollars to commence the work with; he also said he expected to get some money from the railroad, and if he did so he would take five thousand dollars' worth of the bonds.

4th cross-int. You will please state when you were to commence work on the court-house under this contract.

Ans. I don't think there was any time specified. I was to meet Mr. Ham at Vienna about New Year's to make arrangements

90 for building. I was to commence in the spring as soon as the weather would permit.

5th cross-int. Did you meet Mr. Ham about New Year's, as agreed upon?

Ans. I did not.

6th cross-int. Did you ever meet him from the time of making the contract until the completion of the court-house?

Ans. I did not.

7th cross-int. by def'ts. Did you write him any letters in relation to the contract before commencing work?

Ans. I wrote to him in regard to meeting him there once; I never received any answer from him.

8th cross-int. You may state, as a matter of fact, Mr. Wickwire, whether, when you failed to hear from Mr. Ham, you went to

Vienna to see Mr. Pearce, his partner; and, if so, what took place between you and Mr. Pearce in regard to cancelling and annulling the contract, and making a new arrangement in regard to building the court-house or carrying out said contract.

Objected to by def't-.

91 Ans. I did go to see Mr. Pearce after failing to hear from Mr. Ham; I met Mr. Pearce at Vienna; we talked the whole matter over and he seemed disappointed at Mr. Ham's not coming there; he seemed to be dreadfully down; complained about the railroad Co. not paying him; he seemed, before I left, to think the best thing was to let the whole matter drop, not to build the court-house; he held out no encouragement to me; I came home about as badly discouraged as he was, and wrote to Mr. Ham, stating the fix the thing was in, and still wanted to know when he would be there; I was looking for him all the time; he never replied to my letter. As near as I recollect the above meeting was had with Mr. Pearce in February or March, 1870.

9th cross-int. What new arrangement, if any, did you make, and with whom, for the building of said court-house?

Ans. The next thing I heard about it was, Mr. Pearce and Mr. Kuykendall came to Cairo to see me, and Mr. Kuykendall stated to me that he was security some way, and the house should be built,

92 and asked me if I would go ahead and carry out the contract if he would become responsible and furnish the money; I told him I would.

Mr. Kuykendall did carry out his agreement with me; all I wanted was to have somebody who was responsible.

10th cross-int. At the time of this new arrangement that you speak of with Mr. Kuykendall, had you done any work or purchased any materials under your contract with Ham and Pearce?

Ans. I had not.

11th cross-int. by def'ts. When you made this arrangement with Mr. Kuykendall, did you not consider that the contract with Ham and Pearce was abandoned or at an end?

Ans. Well, I don't know that I thought anything about that; I held confidence in Mr. Kuykendall that he would carry out what he agreed to; there was no change in the wording of the contract; all I wanted was some one that was responsible to deal with.

12th cross-int. Would you have gone to work under the contract with Ham and Pearce without the new arrangement made with Mr. Kuykendall, or some such arrangement with some other

93 responsible party?

Ans. I don't think that I should, the way I felt about it then; don't see how I could.

13th cross-int. You may state whether you went to work on the court-house on the faith of the new arrangement made with Mr. Kuykendall, and whether you looked to him for your money for building the same.

13½. Did you ever have any communication with Mr. Ham dur-

ing the progress of the work on the court-house, or up till last week, after the making of the contract?

Ans. I had no communication with him during the progress of the work; after the completion of the work, on settling, I found charged against me either ten or twelve hundred dollars for work done previous to my undertaking the contract; Mr. Ham had represented to me it was in the neighborhood of six hundred dollars; I wrote to Mr. Ham relative to the matter, as there was a difference of six hundred dollars against me that I had not calculated on, owing to the statements of Mr. Ham; he replied to me that
94 the amount was or ought to be the same as he had stated to me. I had no further communication with him in regard to the matter.

14th cross-int'g't'y by def'ts. You may state whether Mr. Ham ever negotiated any of the bonds, furnished any money, or did anything, to your knowledge, under the contract of which you have been speaking.

Ans. No, sir.

15th cross-int'g't'y. Did Mr. Ham or the firm of Ham and Pearce ever pay you, or tender you, any bonds under their said contract?

Ans. No, sir; they did not.

Redirect examination by complainant:

Int'g't'y 1st by pl'ff. State whether, as a matter of fact, when you went to see Pearce in February or March, 1870, that you speak of, you delivered up the written contract that you had enter- into, or anything was said about cancelling or annulling it?

Answer. No; the contract was not given up; there was nothing said specially about cancelling or annulling the contract,
95 only the general drift of the conversation; he appeared to be much discouraged, and spoke of throwing it up and abandoning it.

2d int'g't'y by pl'ff—redirect. If one-fourth of the contract price had been delivered to you in bonds by Pearce, according to the terms of the written contract, would you not have entered upon the work under the contract?

Ans. If that amount of bonds had been delivered to me I think I would have gone to work; I would, however, first have wanted to know when and how the balance would be paid or delivered; I would have wanted some responsible person to transact the business with, as Mr. Pearce and Mr. Ham had appeared to have abandoned the whole matter.

3d int. If the time you visited Mr. Pearce he had said nothing to you about abandoning the contract or letting the thing drop, or talked to you discouragingly about the matter, but had tendered to you one-fourth of the contract price in bonds, would you not have gone on with the work?

96 Ans. From the statements of the finances of Mr. Pearce and Mr. Ham at that time, I don't think I would.

4th int'g't'y. Now, at the time Mr. Pearce and Mr. Kuykendall came to Cairo to see you about going on with the contract, was not

Mr. Kuykendall's proposition simply that if you would go on with the contract he would obligate himself to negotiate the bonds and furnish money to you, in accordance with the contract price?

Answer. Yes; that was the understanding that we had.

N. L. WICKWIRE.

I, John Q. Harmon, a United States commissioner of the circuit court of the United States for the southern district of the State of Illinois, duly appointed to take the deposition of the said Niles L. Wickwire, a witness, whose name is subscribed to the foregoing deposition, do hereby certify that previous to the commencement of the examination of the said Niles L. Wickwire as a witness in the said suit between the said Charles I. Ham, plaintiff, and the said Isaac N. Pearce and Andrew J. Kuykendall, defendants, he was duly sworn by me to testify the truth in relation to the matters
97 in controversy between the said plaintiff and the said defendants, so far as he should be interrogated concerning the same; that the said deposition was taken in the office of Samuel P. Wheeler, in the city of Cairo, in the county of Alexander, and State of Illinois, on the 23d day of June, A. D. 1875, commencing at 9 o'clock a. m. of said day; and that after said deposition was taken by me as aforesaid the interrogatories and answers thereto as written down were read over to the said witness; and that thereupon the same was signed and sworn to by the said deponent, Niles L. Wickwire, before me, the oath being administered by me at the place and on the day and year last aforesaid.

JOHN Q. HARMON,

United [States] Commissioner for the Southern District of Illinois.

(Endorsed:) Filed Jan'y 3, 1876. J. A. Jones, clerk.

98 The depositions of W. W. Boyt, Charles Adison Bain, John Bain, Samuel Jackson, Oliver A. Harker, and Samuel Hess, H. T. Bridges, of the county of Johnson and State of Illinois, witnesses of lawful age, produced, sworn, and examined upon their corporal oaths on the 24th and 25th days of June, in the year of our Lord one thousand eight hundred and seventy-five, at the office of John S. Crum, clerk of the circuit court in and for the county of Johnson, in the State of Illinois, at the court-house in the town of Vienna, in the said county of Johnson, and State of Illinois, by me, John S. Crum, clerk of the circuit court in for the county in the State aforesaid, to be read in evidence in a certain suit and matter in controversy now pending and undertermined in the circuit court of the United States for the southern district of Illinois, wherein Charles I. Ham is complainant and Isaac N. Pearce and Andrew J. Kuykendall are defendants, in behalf of the said complainant, as well upon the cross-interrogatories of the said defendants as upon the interrogatories of the said complainant. The said W. W. Boyt, Charles Addison Bain, John Bain, Samuel Jackson, Oli-
99 ver A. Harker, H. T. Bridges, and Samuel Hess, each being first duly sworn by me as witnesses in said cause pre-

vious to the commencement of their examination to testify the truth as well on the part of the complainant as the defendants in relation to the matters in controversy between the said complainant and defendants so far as they should be interrogated, testified and deposed as follows:

Testimony of W. W. Boyt.

The deposition of W. W. Boyt, who, being duly sworn, as follows, to wit:

Interrogatory 1st. State your name, age, occupation, and place of residence.

Answer. My name is W. W. Boyt; my age is 33 years; my occupation is clerk of the county court of Johnson county, State of Illinois; my place of residence is Vienna, Johnson county, State of Illinois.

Int. 2. If you are acquainted with the parties to this suit, or either of them, so state; and also state how long you have known them.

Ans. I am acquainted with the defendants, Isaac N. Pearce and Andrew J. Kuydendall; have known them 15 years. I am
100 not acquainted with the complainant, Charles I. Ham.

Int. 3. State what records, if any, you are the custodian of.

Ans. I am custodian of the records of the county court of Johnson county, Illinois.

Int. 4. You may state whether you have ever seen any of what is known as the Johnson county ten per cent. court-house bonds, issued to one Joseph K. Frick in payment of the building of the court-house in Johnson county; and, if so, what amount are those bonds each.

Defendants, by Damon & Damon, their counsel, object to the interrog. and answer.

Ans. I have seen several bonds, which I suppose were issued in payment of the court-house; they were for one hundred dollars each, bearinr ten per cent. interest per annum and six years from the issuing.

Int. 5. If there is any record showing that an order was made for the first installment of these bonds to issue, you may state when such order was made, in what book it is contained, on what
101 page, and read the order.

Ans. Yes; there is such a record. I suppose it was made at the September special term, A. D. 1868, and appears on county court record "B," on page 391, and is as follows:

Ordered, That county bonds of Johnson county, of not less than one hundred dollars each, be issued, amounting in the aggregate to the sum of nine thousand five hundred and eighty-nine and twenty-five hundredth dollars, due in six years from the date thereof, redeemable at an earlier period, at the option of the county court, payable to Joseph K. Frick in full of the first installment due on the court-house building contract, said bonds to be issued in accordance with and in pursuance of an act of the Legislature of the State of

Illinois approved March 7, 1867, entitled "An act for the relief of Johnson county."

Defendants, by Damon & Damon, their attorneys, object to the interrog. and answer, and also to interrog. 3rd and answer.

Int. 6. State whether, as a matter of fact, there is a bound book in your office, entitled "Bonds, Johnson County," and whether that book contains the stubs of certain bonds; and, if so, of what bonds.

Defendants object to the interrogatory and answer.

102 Ans. There is a bound record containing the stubs of certain bonds. I don't know whether it is a book or what it is. It is entitled Bonds, Johnson County. It contains what I believe to be the stubs of certain bonds issued, but I would not state positively that they are. I did not see the bonds taken from the stubs.

Int. 7. State how many such stubs there are in that book.

Defendants object to interrogatory and answer.

Ans. There are two hundred and ninety-one (291.)

Int. 8. Record the first one of those stubs.

Defendants object to the interrogatory and answer.

Ans. No. 1; to whom issued, Joseph K. Frick; amount, $100. I have received above-described bond. J. K. Frick, by A. J. Kuykendall, att'y.

Int. 9. State whether you are acquainted with the handwriting of Andrew J. Kuykendall or not, and how he signs his name.

Defendants object to the interrog. and answer.

103 Ans. Yes, I am acquainted with his handwriting, and he generally signs his name A. J. Kuykendall.

Int. 10. In whose handwriting does the words "J. K. Frick, by A. J. Kuykendall, att'y," in said stubs contained, appear?

Defendants object to the int. and ans.

Ans. I could not state positively, but my best belief is that it is the handwriting of Andrew J. Kuykendall, but would not state positively; it bears a similarity to his handwriting.

Int. 11. Which of said stubs are so signed "J. K. Frick, by A. J. Kuykendall, att'y"?

Def'ts object to int. and ans.

Ans. Nos. 1, 2, 3, and 4.

Int. 12. Which ones are signed "A. J. Kuykendall, att'y"?

Def'ts object to int. and ans.

Ans. Nos. from 5 to 95 inclusive, except Nos. 37, 43, 53, 70, and 80.

Int. 13. State how the remaining 201 of said stubs are signed.

Defendants object to said int. and answer.

104 Ans. The remaining two hundred and one are signed "A. J. Kuykendall."

Int. 14. State in whose handwriting the words "A. J. Kykendall" on all of said stub appears.

(Def'ts object to the int. and ans.)

Ans. I would not state in whose handwriting it appears; I would just state that it bears a similarity to the handwriting of Andrew J. Kuykendall.

Int. 15. You may state whether or not you have seen bond No. 180, corresponding to stub No. 180 in said book, and whether the writing marked Exhibit "A," and attached to your deposition, is a copy of said bond.

(Defendants object to int. & answer.)

Ans. Yes, I saw bond No. 180; would not state positively that it came off of stub No. 180, but to the best of my knowledge, after comparing them, I believe that it did come off of stub No. 180; the writing marked Exhibit "A," and hereto attached, is a copy of said bond.

105 Int. 16. To whom do the 291 stubs recite the said bonds were issued?

(Def'ts object to int. & ans.)

Ans. They were issued to the name of—some to J. K. Frick, and some to Joseph K. Frick, except Nos. 22, 25, 70, & 112, which do not show who they was issued to, and No. 112 does not show the amount, as also No. 114.

Int. 17. You may state if there is any record showing that A. J. Kuykendall has received any other bonds in payment for the building of the court-house in said county; and, if so, state or read what that record is.

(Def'ts object to int. and ans.)

Ans. I find on county court record "B," page 544, the following order or entry: "January, special term, 19, 1871. The following bonds was signed by John Oliver, judge of the county court of Johnson county, and signed B. S. Smith, clerk of said county court, on the 20th day of January, 1871, in compliance with a order made by the county at a special term of said court, commenced and holden in the court-house, in the town of Vienna, on the 19th day Jan'y, 1871,
106 the bonds bonds signed by John Oliver, judge, and B. S. Smith, in full payment to Joseph K. Frick, for building a court-house in the town of Vienna, and delivered to A. J. Kuykendall, said Joseph K. Frick's attorney, bonds, each $100, and *and* the numbers, as follows, commencing the first numbers 292 to 376, inclusive, this the 26 day of January, 1871. A. J. Kuykendall, attorney for J. K. Frick." The name of A. J. Kuykendall appears to be the handwriting of Andrew J. Kuykendall—I would not state positively that he wrote it—and on the same stub at page 450, I find the following entry, to wit: "Ordered by the court, that Joseph K. Frick, or order, be allowed four hun-

dred and fifteen dollars 91 cents, to be paid out of the special 60 cents levy."

Int. 18. When did you first enter upon the duties of clerk of the county court of Johnson county?

(Def'ts object to int. and ans.)

Ans. On the first day of December, A. D. 1873.

W. W. BOYT.

107 The foregoing deposition was subscribed by W. W. Boyt, and sworn to by him before me on this 24th day of June, A. D. 1875.

JOHN S. CRUM,
Clerk of the Circuit Court of Johnson Co., Ills.

"A."

Bond Issued by Johnson County, Illinois.

No. 180. United States of America, $100.
State of Illinois, County of Johnson.

Know all men by these presents, that the county of Johnson acknowledges to owe and agrees to pay Joseph K. Frick, or bearer, six years from the date of this bond, one hundred dollars, lawful money of the United States of America, at the county treasurer's office of said county, with interest at the rate of ten per centum per annum, payable annually, on the presentation and surrender of the annexed coupons as they severally become due.

108 This bond is executed and issued in accordance with the provisions of an act of the General Assembly of the State of Illinois, entitled "An act for the relief of Johnson county," approved March 7th, 1867.

Also in conformity to an order of the county court of said Johnson county, made at a special term of the county court commenced and holden on the first day of October A. D. 1868.

In testimony whereof, the county court of said county of Johnson have caused these presents to be signed by the judge and countersigned by the clerk of the county court of said county, and to be sealed with the seal of said court, this 8th day of September A. D. 1870.

JOHN OLIVER,
Judge of County Court of Johnson County.

Countersigned by
B. S. SMITH,
Clerk of the County Court of Johnson County.

Testimony of Charles A. Bain.

The deposition of Charles Addison Bain, of Johnson county, Ills., who, being duly sworn, deposed as follows:

109 Interrogatory 1. State your name, age, occupation, and place of residence.

Answer. My name is Charles Addison Bain; my age is 65 years; my occupation, a farmer; my place of residence is Johnson county, State of Illinois.

Int. 2. Are you acquainted with the parties to this suit?

Ans. I am not acquainted with Charles I. Ham; I am acquainted with Isaac N. Pearce and Andrew J. Kuykendall.

Int. 3. State whether you have ever purchased of defendant Kuykendall any of what are known as the Johnson county ten per cent. court-house bonds, issued to Joseph K. Frick, of the denomination of $100 each; and, if so, how many you purchased, when, and where, and at what price?

(Def'ts object to int. and ans.)

Ans. I did purchase five such bonds of the following numbers, to wit: 96, 97, 98, 99, & 100, for $100 each, dated September 8, 1870. I gave A. J. Kuykendall 90 cts. to the dollar; I think it was
110 in September, 1870, I bought them; I also paid the accrued interest on them; the purchase was made at the court-house, in the town of Vienna.

C. A. BAIN.

The foregoing deposition was subscribed by C. A. Bain, and sworn to by him before me, this 24th day of June, A. D. 1875.

JOHN S. CRUM,
Clerk of the Circuit Court of Johnson County Ills.

Testimony of John Bain.

The deposition of JOHN BAIN, who, being duly sworn, deposed as follows, to wit:

Interrogatory 1. State your name, age, occupation, and place of residence?

Answer. My name is John Bain; my age is 58 years; my occupation is merchandising or selling goods; my place of residence is Vienna, Johnson county, Illinois.

Int. 2. Are you acquainted with the parties to this suit, and how long have you known them?

Ans. I am acquainted with them; have been acquainted with Mr. Kuykendall upwards of 40 years, and Mr. Pearce near on to 30 years, and with Mr. Ham a little over six years.

111 Int. 3. Do you recollect of any work being done at the court-house of Johnson county in the fall of 1869, by the firm of Ham & Pearce; and, if so, who superintended the work?

(Def'ts object to int. & ans.)

Ans. My recollection is that there was some work done towards the building the court-house that fall in excavating for the foundation, and getting out, hauling, and delivering rock; my understanding was that it was Ham & Pearce that were doing the work; I frequently saw Mr. Ham there, and Mr. Pearce was frequently there about the work also.

Int. 4. Who afterwards undertook the building of the court-house and completed it?

(Def'ts object to int. & ans.)

Ans. Mr. Wickwire came here to build the court-house and completed it, according to my understanding of it.

Int. 5. If either Kuykendall or Pearce stated to you near or about the time Mr. Wickwire commenced work upon the house, who had procured him to so commence work; you may so state.

112 (Def'ts object to int. & ans.)

Ans. Mr. Pearce and Mr. Kuykendall were down in the square here with some man that I was not acquainted with, looking around; I went down to where they were and they gave me an introduction to him, and said that it was Mr. Wickwire, the man who had undertaken to build the court-house.

Int. 6. You may state whether from the time that Ham and Pearce undertook the contract of building the court-house you were particularly interested in the matter, and why.

(Def'ts object to int. & ans.)

Ans. I felt more interest in one of the contractors prosperity in a financial sense; Mr. Ham had got in our debt somewhere between twelve and fifteen hundred dollars on his own account, and we had accepted an order conditionally for nearly three hundred more; I thought this about it, that if the court-house was built on the contract that was let to Mr. Wickwire, as I understood it, there would be considerable profits coming to Mr. Ham, and the (Mr. Ham) had stated to me that he did not expect to take away anything,
113 that in case he did not get his money from the railroad he expected to apply it on his debts.

Int. 7. You may state now, as a matter of fact, you talked with Mr. Pearce and Mr. Kuykendall about the matter of Ham's contract while the work was going on.

(Def'ts object to int. & ans.)

Ans. Yes.

Int. 8. You may state how far the work had progressed when Kuykendall and Pearce, or either of them, spoke to you about Ham's having abandoned the contract or having no interest in it, if they said anything of the kind.

(Def'ts object to int. & ans.)

Ans. I don't recollect that they ever talked to me about his having no interest in it especially until in January of 1871, especially to me. The building was then nearly completed.

Int. 9. Do you recollect anything about the time Mr. Pearce went up to Indiana to see Mr. Ham; if so, when was it, and how far had the work on the court-house progressed?

114 (Def'ts object to int. and ans.)

Ans. It was late in the summer or early in the fall; more likely

in the summer. Some of the brick-work was done; some of the wall nearly half up. I don't recollect for certain about that.

Int. 10. If you had any conversation with Mr. Pearce on his return relative to Mr. Ham's connection with the court-house matter, state what it was.

(Def'ts object to int. and answer.)

Ans. Yes; I had a talk with him after he returned. I asked him if he seen Ham, and if he had bought his interest in the court-house contract. He said he had seen Ham; he said he had not bought Ham's interest in the court-house contract.

Int. 11. State what brought up the conversation with Mr. Pearce.

(Def'ts object to int. & answer.)

Ans. I was interested to hear from Mr. Ham, and to know whether Pearce had bought him out or not.

Int. 12. Do you recollect of having a conversation with
115 Mr. Kuykendall about this court-house matter in January, 1871, while on your way to Springfield, Illinois? And, if so, state what the conversation was.

(Def'ts object to int. and ans.)

Ans. He and I were talking about the bonds, and their value, &c., I mean the court-house bonds; one thing I asked him was, if he would sell me $10,000 in bonds at $8,000; he said he would not take it. He spoke of their being worth more than that, and that they had never sold any of them for less than 90 cts., except to Mr. Hawick to give the thing a start; he said he calculated to keep some of them if he could not get the 90 cts., that they were a good investment.

He said he ought to make $5,000 on the court-house, but did not know whether he would do it or not.

Int. 13. State if you know anything further of benefit to complainant.

(Def'ts object to int. & ans.)

Ans. I don't know that I do.

JOHN BAIN.

The foregoing deposition was subscribed by John Bain, and sworn to by him before me, this 24th day of June, 1875.

116 JOHN S. CRUM,
Clerk of the Circuit Court.

Testimony of Samuel Jackson.

The deposition of SAMUEL JACKSON, who, being duly sworn, deposed as follows, to wit:

Interrogatory 1. State your name, age, occupation, and place of residence.

Answer. My name is Samuel Jackson; my age is 45 years; my

occupation is a merchant; my place of residence is Vienna, Johnson county, Illinois.

Int. 2. Are you acquainted with the parties to this suit?

Ans. Yes.

Int. 3. If you remember of any work being done towards building the court-house in Johnson county in the fall of the year 1869; if so, what was the work, and who did it?

(Def'ts object to int. & answer.)

Ans. Yes; I remember of such work being done, and it was done under the supervision of Mr. Ham; the work was excavating for the foundation and delivering stone for the same; Mr. Ham had several teams there at work.

117 Int. 4. State whether you have ever had any conversation with defendant Pearce relative to Mr. Ham's interest in the court-house contract or matter; and, if so, when and where that conversation was had, and what was said between you and him.

(Def'ts object to int. and ans.)

Ans. It was. I could not tell what month it was; it was at Cairo, in 1872, in the spring. The way the conversation came up, we were just ready to start home; Mr. Pearce and Mr. Simpson had gone into the cars; we had been down there for a settlement with C. I. Ham & Co. for moneys due Bain and Jackson; Simpson and Pearce had gone into the cars, and Mr. Ham and I were together a short distance behind them, and directly Mr. Ham and I parted, and I went into the cars also, and when I went into the cars and sat down, either Mr. Pearce or myself, I don't remember which, made the remark that Charley Ham was an honest man; there was some other conversation which I don't remember, but Mr. Pearce made

118 the remark, I just told Charley Ham to come to Vienna, and that he should have his rights in the court-house, or "his share of the profits," I don't recollect which; this was after the court-house was completed.

SAM. JACKSON.

The above deposition was subscribed by Samuel Jackson, and sworn to by him before me, this 24th day of June, A. D. 1875.

JOHN. S. CRUM,
Clerk of the Circuit Court of Johnson County, Ills.

Testimony of Oliver A. Harker.

The deposition of OLIVER A. HARKER, who, being first duly sworn, did depose as follows, to wit:

Interrogatory 1. State your name, age, and occupation, and place of residence.

Answer. My name is Oliver A. Harker; my age is 29 years; my occupation is attorney-at-law; my place of residence is Vienna, Johnson county, Illinois.

Int. 2. Are you acquainted with the parties to this suit?

Ans. Yes.

119 Int. 3. State if ever you have purchased any of what are known as the ten per cent. Johnson county court-house bonds, issued to Joseph K. Frick; and, if so, when did you first purchase them and for what price?

(Def'ts object to int. & ans.)

[Ans.] I purchased four of them in the summer or fall of 1870 for 90 cts. on the dollar and the accrued interest. I paid a little over $387 for the four bonds and the accrued interest. I purchased them of Col. Hess. I have lately purchased more of said bonds at 90 cts. and the accrued interest, and some at 95 cts. without the interest.

Int. 4. If you know about what was the marketable or selling price of said bonds during the year 1870 and the first part of 1871, you may state what it was.

(Def'ts object to int. & ans.)

Ans. I think the ordinary price was about 90 cts., although I have heard that Mr. Hawick got some for less. I know of none others being sold during that time for less than 90 cts. I bought
120 some for less than that during that time, and I sold a number for more than that price.

Int. 5. State whether you were before the county court of Johnson county at the term of the county court in January, 1871, when the court-house building was received, and whether defendant, Kuykendall, was there, and what was said by him relative to the court-house matter and the bonds.

(Def'ts object to int. & ans.)

[Ans.] I was present at said court at said term, and defendant, A. J. Kuykendall, was present while the court was in session. I presented to the court an assignment executed by Ham to Bain & Jackson, for the benefit of his creditors, of his interest in the profits in the court-house and the bonds. I showed them the assignment made by Kuykendall, as Frick's attorney, of his interest in the court-house contract to Ham & Pearce, as it appeared of record upon the County Court Journal "B," and told them that the balance of the bonds, nine or ten thousand dollars, should be issued
121 to Ham and Pearce, and not to def't, Kuykendall, or Frick, and protested against their issuing and delivering them to said Kuykendall. Kuykendall stated to the court then and there that they had nothing to do with Ham or Ham and Pearce in the matter, and that they could only recognize Frick; and that if Ham had an interest in the matter it must be determined in another court. This is the substance and very near the language used.

OLIVER A. HARKER.

The foregoing deposition was subscribed by Oliver A. Harker, and sworn to by him before me, on this 24th day of June, A. D. 1875.

JOHN S. CRUM,
Clerk of the Circuit Court of Johnson County, Ills.

Testimony of H. T. Bridges.

The deposition of H. T. BRIDGES, who, being duly sworn according to law, deposed as follows, to wit:

Interrogatory 1st. State your name, age, and place of residence, and occupation.

Answer. My name is H. T. Bridges; my age is 43 years; my
122 place of residence, Vienna, Johnson county, Ills.; my occupation is that of a blacksmith.

Int. 2. Are you acquainted with the parties to this suit?

Ans. Yes.

Int. 3. Have you ever seen any of the Johnson county ten per cent. court-house bonds, issued in payment of the building of the court-house?

(Def'ts object to int. & ans.)

Ans. Yes.

Int. 4. State whether you ever purchased any of those bonds of defendants Kuykendall or Pearce; and, if so, when did you buy them and what did you pay for them.

(Def'ts object to int. and answer.)

[Ans.] Yes; I bought three of the bonds from Mr. Pearce in 1871, in the spring of the year. My recollection is that I got them at 90 cts. to the dollar.

Int. 5. State whether Mr. Pearce ever offered you bonds at 90 cts. at any other times.

(Def'ts object to int. & answer.)

Ans. Yes; I think he did.

H. T. BRIDGES.

123 The foregoing deposition was subscribed by H. T. Bridges, and sworn to by him before me, this 25th day of June, A. D. 1875.

JOHN S. CRUM,
Clerk of the Circuit Court of Johnson County, Ills.

Testimony of Samuel Hess.

The deposition of SAMUEL HESS, who, being duly sworn according to law, deposed as follows, to wit:

Interrogatory 1st. State your name, age, place of residence, and occupation.

Answer. My name is Samuel Hess; my age is 50 years; my occupation is a farmer, a miller, and merchant; my place of residence is Vienna, Johnson county, Illinois.

Int. 3. State whether you have ever seen any of the what are known as the Johnson county ten per cent. court-house bonds.

(Def'ts object to int. & ans.)

Ans. Yes.

Int. 4. If you have ever received any of said bonds from defendant Pearce, state under what circumstances, how many, what
124 you paid, and when it was?

(Def'ts object to int. & ans.)

Ans. I did receive some of them from Pearce; my recollection is that it was $800; he paid them to me for lumber that I first agreed with Frick for for the court-house; Pearce took the *the* lumber when he took the contract; my recollection is that I got them dollar for dollar; my recollection is that it must have been in the last part of the year 1870.

Int. 5. Where was it that you received the bonds?

(Def'ts object to int. & ans.)

Ans. My recollection is that it was at Pearce's store, in the town of Vienna.

Cross-examination by def's:

Cross-int. 1. State if there was not a contract between yourself and Frick about the price of the bonds, and also the price of the lumber, to be paid in bonds at par?

Ans. My best recollection is that there was an agreement between Frick and myself about the price of the lumber to be paid in bonds at par.

125 Cross-int. 2. Did you sell those bonds you got from Pearce; and, if so, when, and what did you get for them on the dollar?

Ans. I sold four hundred dollars of them to Harker at 85 or 90 cts.; I don't remember what I done with the balance, or who got them.

In rebuttal by compl't:

Was not this contract with Frick, that you speak of, to be carried out by Pearce?

Ans. Frick failed to comply with the contract with me; then Pearce took the lumber of me afterwards, that at the same price that Frick was to take it at.

SAMUEL HESS.

Sworn to and subscribed before me, this 25th day of June, A. D. 1875.

JOHN S. CRUM,
Clerk of the Circuit Court.

Testimony of John S. Crum.

I, John S. Crum, of Vienna, Johnson county, State of Illinois, aged 38 years, hereby state: That I am acquainted with the parties to this suit, and that in the year 1870 or 1871, and perhaps in 1872, and since then, I have purchased several of what are known as the

Johnson county ten per cent. court-house bonds. I had at
126 one time seventeen of them. I bought four of them that I have a distinct recollection of from defendant Kuykendall, and have an indistinct recollection that I bought more of them of him, but would not state for certain. I paid 90 cts. on the dollar for all I bought, and sold some for 90 cts. on the dollar and the balance for 95 cts. on the dollar. The purchases and sales of these bonds were made at different times, in the course of business.

JOHN S. CRUM.

Sworn to before me by John S. Crum, this 25th day of June, A. D. 1875.

W. W. BOYT,
County Clerk of Johnson County, Ills.

It is agreed to that the foregoing sworn statement of John S. Crum shall be read in evidence on the hearing of the cause.
Vienna, Ills., June 25th, 1875.

O. A. HARKER,
Att'y for Comp't.

DAMON & DAMON,
Att'ys for Def'ts.

127 I, John S. Crum, clerk of the circuit court in and for the county of Johnson, in the State of Illinois, do hereby certify that previous to the commencement of the examination of the said W. W. Boyt, Charles Addison Bain, John Bain, Samuel Jackson, Oliver A. Harker, H. T. Bridges, and Samuel Hess, as witnesses in the said suit between the said Charles I. Ham, complainant, and the said Isaac N. Pearce and Andrew J. Kuykendall, defendants, they were duly sworn by me to testify the truth in relation to the matters in controversy between the said Charles I. Ham, complainant, and the said Isaac N. Pearce and Andrew J. Kuykendall, defendants, so far as they should be interrogated concerning the same; that the said depositions were taken at my office in the court-house in the town of Vienna, in the county of Johnson, in the State of Illinois, on the 24th and 25th days of June, A. D. 1875; and that after the said depositions were taken by me as aforesaid the interrogatories and answers thereto as written down were read over to the said witnesses, respectively, and that thereupon the same were signed by them, respectively, and each one sworn to by
128 the said respective deponents, before me, at the place and on the days last aforesaid.

In testimony whereof I have hereto subscribed my name and set my official seal, this 29th day of June, A. D. 1875.

[SEAL.] JOHN S. CRUM,
Clerk of Circuit Court of Johnson County, Ill's.

(Endorsed:) Filed September 1, 1875. J. A. Jones, clerk.

129 *Testimony of Charles I. Ham.*

Circuit Court United States, Southern District Illinois.

CHARLES I. HAM
v.
ISAAC N. PEARCE and ANDREW J. KUYKENDALL. } Chancery.

Personally appeared before me, J. A. Jones, master in chancery of said circuit court, at my office, in Springfield, in said district, on the 22d day of July, 1875, Charles I. Ham, witness for complainant.

CHARLES I. HAM, being first duly sworn, deposes and says: I am forty-three years old; occupation, a railroad contractor, and reside in Chillicothe, Ohio.

I have known the defendants since December, 1868, or January, 1869. In the summer or fall of 1869 I went to Vienna, Johnson county, first to execute a contract I had on the Cairo and Vincennes railroad for the graduation and building of some 12 miles of the road-bed, including in my contract a tunnel of 1,000 feet in length. We worked on that contract up to August, 1869, some 5 months since the work commenced; about the
130 first of August we suspended work on account of the non-payment of the estimates of the company then due under the terms of the contract; it was during this time I first became acquainted [with] I. N. Pearce, he then being a contractor on the road; about the first of September, 1869, Mr. Pearce came into my office in Vienna and stated that one Frick, who had the contract for building the court-house in Vienna, had given up the contract and left the place, and that the people of the county were very anxious the house should be built, and he understood I was a builder, and he had no doubt we could make arrangements with the county court to build the house. I asked them then, in reference to the building, how the matter stood; he told me one A. J. Kuykendall had a power of attorney from Mr. Frick to make an assignment of the Frick contract to any one he saw proper. I asked to see the original contract Mr. Frick had made, and also the plans and specifications of the building; after examining the contract and making a detailed estimate of the cost of the building under the original plans and specifications, I told him that I had come to the conclusion there was no money in the contract, and
131 that if I were permitted to make some changes which I thought would not detract from the general utility of the building that I would take hold of the contract with him as equal partners. He suggested that we write up the changes and submit them to the court which met the following day. I did so, and suggested some six changes, and took them into open court and explained them to the court, and they consented to those changes with two more changes suggested by themselves, which I agreed to, and were attached to the original specifications as a part thereof, and put on record. We then took the assignment of the contract from Mr. Kuykendall as Frick's agent. About the first of October following we

commenced work; done some excavation for foundation; quarried, and delivered stone; worked some month and a half or two months I think; the amount of the work was about $690.00, as shown by the books.

I gave this work my own personal supervision, and my own teams did the hauling of the stone, working one hundred and five days altogether. It came late in the fall, and the wet season set in,
132 and it became impracticable to continue the work; could not do it profitably. Pearce and I talked about the propriety of reletting or subletting the contract to another party, if we could do so profitably. I knew parties I thought we could no doubt let the building to of advantage to us both. I left Vienna and started East, stopped at Cairo; while there met one M. L. Wickwire; he said to me he understood I had a court-house to let. I told him I had; said he was a builder, and would like to have the opportunity of building on it. He gave me his references. I gave him the plans and specifications of the building; told him it was to be paid for in Johnson county bonds, which we considered worth ninety cents on the dollar. During the day I satisfied myself in regard to his references. He came in with his bid of $27,000.00 in bonds, and another proposition 10 per cent. less than that in cash. I considered it a favorable bid, and would write immediately to my partner, Mr. Pearce, and if he was satisfied I had no doubt we would let him have the contract. During this time we had considerable
133 conversation in regard to the bonds, and the *and the* probability of negotiating them for cash. I told him what the people of Vienna had promised to do with me on the bonds; that the principal merchants up there would take them in trade at par; that I had myself contracted on account of the contract of the Cairo and Vincennes railroad in bonds, which they were willing to liquidate in the same way, and also that if the C. & V. R. R. Co. resumed work they would still continue to accept my orders, taking their pay in these orders at par; and also that on the resumption of the work on the C. & V. R. R. I would [take] $50,000 of their bonds myself, at 90 cents on the dollar; he hesitated somewhat, entering into the contract, rather insisting I should accept the cash proposition. I told him I couldn't do that, but would give him $27,300.00 in bonds, which he agreed to. I also told him he could probably satisfy himself more fully when Mr. Pearce came down, as he was a resident of the place he could tell him more about the negotiation of the bonds than I could; he was acquainted with everybody. Mr. Pearce arrived that day about 2 o'clock. I told him of the proposition of
134 Mr. Wickwire, and also of his references and standing, and I was satisfied he was a responsible man, but I would rather Mr. Pearce would go around with me and see the references himself; we done so, and he seemed to be fully satisfied in regard to Wickwire's responsibility, and well pleased with the terms of the proposed contract. We then went into a written contract with Mr. N. I. Wickshire, signed in duplicate, one of which I attach to my deposition and mark Exhibit "A." I then handed one copy of this contract, together with the plans and specifications, to Mr. Wickwire, and

gave the other one to Mr. Pearce. I don't know Exhibit A attached to my deposition is contract given to Mr. Pearce or Mr. Wickwire. This was about 10 or 11 o'clock in the evening; I was to leave for Cincinnati about 3 o'clock the following morning; Mr. Pearce left with me, I for Cincinnati, and Mr. Pearce on his way to Vienna. I told Mr. Pearce I expected to [be] back by the first of March; somewhere along then; hoped to before, as we was expecting the work on the Cairo and Vincennes R. R. Co. to be resumed. After being about Cincinnati 2 or 3 weeks I learned from Dodge, Lord & Co.,
135 who were the principal contractors of the C. & V. R. R. Co., there was no probability of the resumption of work before June, 1870.

About February 1st I entered into a contract to do some work on the Indianapolis and St. Louis road, to be finished on or before the first of July, under a forfeit; in the spring of 1872 work was resumed on the Cairo and Vincennes R. R. Co. I told Mr. Wickwire that I should probably be in Vienna and see him every day, and that if I were I would render him all the assistance in my power in regard to the building and negotiation of the bonds. I told him I was looking for work to be resumed on the Cairo and Vincennes every day, and had no doubt before spring that it would; nothing was said in regard to my being there if work was not resumed on the Cairo and Vincennes. I did not obligate myself to be there when I had nothing to do. I recollect of receiving one letter from Mr. Wickwire in relation to the building of the court-house in Vienna was received in November, 1870. I have hunted for this letter and am unable to find it. The letter was in regard to the
136 price of the work which had already been done before he took the contract. He said Pearce charged him about $1,200.00 for the work which had already been done.

That he understood from me the amount was something over $600.00. I replied to the letter and gave him the exact figures, as shown by my books. I received 2 or 3 letters from Mr. Pearce, perhaps more. I am unable to find them. Suppose they are destroyed. One of the letters I received stated Mr. Wickwire had turned up to Vienna. That he talked rather discouragingly about going to work. He said Mr. Wickwire had gone down to Cairo, and didn't say when he was coming back again.

Contents of letter objected to by solicitor for def'ts, and also contents of reply.

Pearce said he was going down to Cairo and to take Mr. Kuykendall with him. I received a letter from Mr. Pearce afterwards stating Mr. Wickwire had come up and gone to work. When I went away, to my best recollection, I left $7,800.00 of Johnson county bonds in the hands of Mr. Pearce. There was accrued interest on these bonds due the the last of November or first of December, 1869, at 10 per cent. interest. There was also in the hands of Wm. Perkins some $300.00 additional bonds. At any rate
137 the whole installment of $9,500.00 was made up to us by Mr.

Kuykendall, out of which was only paid 690 odd dollars for the work I had done.

These bonds were placed in Pearce's hands or the first installment under our contract. Mr. Pearce received the bonds and moneys, as he was to attend to the financial part of the contract, and I was to attend to the mechanical. Kuykendall most certainly knew at that time the bonds were in the hands of Pearce, and he handed them over. Mr. Pearce came to see me when I was at work on my contract in Indiana, about 30 miles east of Terre Haute, in the latter part of May, 1870, (about May 25th). I asked Mr. Pearce how he was getting along with the court-house. He said he thought they were getting along very slow; that he experienced a good deal of difficulty in negotiating the bonds; talked very discouragingly about the prospects; was afraid our profits would be very light, or something to that effect; he spoke about the disposition of my interest in the contract; I told him I was not disposed to sell it, or make an assignment of it to anybody else; he seemed to be
138 rather afraid I would sell or assign my interest in it to somebody else who would be disagreeable to him as a partner; I told him positively I would not do it; he went on to say he thought Kuykendall wanted in——; asked me if I was willing that he should have a third interest in the contr[illegible]; Kuykendall had been of great assistance to him in negotiating t[illegible] bonds, and that he was willing he should have a third interest if I was; I told him I was not willing; I considered we had the building let to a responsible man who would construct the building to the satisfaction of all parties concerned, and didn't see any necessity of giving up a third interest in the profits; was willing to pay Kuykendall a liberal per cent. for all negotiations.

[Int.] State whether or not Pearce, at that or any other time, stated to you that Kuykendall instructed him to say that if you would come on immediately and go on with your contract, or take charge of the building of the court-house and finish it up you might still go on with the work.

[Ans.] No, sir; nothing of the kind.

Int. State whether or not Pearce, at that or any other time,
139 made any statement to you to this effect.

Ans. Nothing that made me suspect such a thing.

Int. State whether or not you, at the time Pearce visited you in Indiana, or at any other time, stated to Pearce that if you was not at Vienna by the first of June following, he might consider you out of the contract, or anything to that effect.

Ans. No, that was impossible, for I could not get my work done to the first of July.

Int. State whether or not Pearce, at the time he visited you in Indiana, or at any other time, stated to you that he had surrendered the assignment to Kuykendall, or your contract with Wickwire, or anything to that effect.

Ans. No, we had no conversation which led me to suspect such a thing; I had a conversation with Mr. Pearce at the St. Charles Hotel, in Cairo, after the completion of the court-house; he told me if I

would come to Vienna, I should have my interest in the profits of the court-house contract, it should, it all should be fixed up
140 satisfactorly. I am acquainted with Samuel Jackson of Vienna; he was in Cairo the day I had this interview with Mr. Pearce at the St. Charles Hotel; I went up to Vienna the first or second day after this conversation. I went to see Mr. Pearce in regard to the matter; he told me I would have to go and see Mr. Kuykendall, as he had only his part of the profits, and mine was in Kuykendall's hands; saw Mr. Kuykendall; said he knew nothing about it; said if anything was coming to me, would have to see Mr. Pearce, or something to the effect. I brought a suit in the State court in the spring or fall of 1872, which was dismissed and brought in this court.

Cross-examination:

In October, 1869, I took the general supervision of the work; I hired the men, fixed their wages, kept their time, and returned it to Pearce with my approval; I had 4 or 5 teams working, altogether equal to one team 105 days; Mr. Pearce paid out of the funds of the firm on my voucher, for the feed of the teams and the drivers.
141 Nothing was done, beside quarrying and delivering the rock for the foundation.

After I left Mr. Pearce at Cairo, in the fall of 1869, I next saw him in May, 1870, about 40 miles east of Terre Haute, Indianapolis. After seeing him in Indiana I next saw him in Cincinnati, in January, 1872. I don't remember that in Cincinnati we had any particular talk about the court-house. I never wrote to him or demanded of him any portion of the profits for my share of the work under the contract of the court-house in Vienna, for the reason that I had assigned my interest in this contract for the benefit of my creditors at Vienna on debts contracted on the Cairo and Vincinnes R. R. Co. When I left Cairo, in the fall of 1869, I did not particularly intend [to] return and see about the court-house contract. If I had nothing else to do, certainly I would have gone back. I never should have consented to sublet it if I had not wanted to do something else at the time I made the contract with Mr. Wickwire. I don't recollect that I promised to meet him at Vienna on the following New Year and raise him some money by negotiating the bonds.
I expected, however, to be there. I told Mr. Wickwire I would
142 guarantee the sale of the bonds at 90 cts. on the dollar on the condition the C. & V. R. R. Co. paid me off. I never got a letter from Mr. Wickwire enquiring (in January or Feb'y, 1870) why he had not met me in Vienna, as he had promised. I considered Mr. Wickwire entirely took my place as constructor of the work, and that Mr. Pearce had the money and bonds in his hands ready to pay him, according to the terms of the contract I had made with him. The county court had a superintendent on the work, and I had fully posted myself in regard to the ability of Mr. Wickwire, and so informed Mr. Pearce that I considered him more competent to build the building than I was myself. I took no bond from Mr. Wickwire to perform the contract referred to; the understanding with

Mr. Wickwire was this; that if he took the installment from Mr. Pearce of one-fourth of the contract price of the court-house all at once before any work was done, he would have to give Mr. Pearce a bond for it. After I left Vienna, in fall 1869, I spent no time or money about the court-house contract until after it was completed. I only had some correspondence with Mr. Pearce. I don't remember how many letters I wrote Mr. Peace about the court-house.
143 I wrote as many as three. It was previous to his visit in Indiana. I had no correspondence after that.

Redirect examination:

I paid off the debts for which I assigned my interest in the profits of this contract, and this assignment was surrendered to me in 1872.

CHAS. I. HAM.

Subscribed and sworn to before me, this 22d July, 1875.

J. A. JONES,
Master in Chancery, U. S. C. C., South. Dist. Ills.

"EXHIBIT A."

Agreement between N. L. Wickwire and Ham & Pierce.

An agreement of two parts, made this eighth (8) day of December, in the year eighteen hundred and sixty-nine, by and between Niles L. Wickwire, of Cairo, Illinois, party of the first part, and Isaac N. Pearce and Charles I. Ham, of Vienna, Illinois, under the name of Ham and Pearce, of the second part.

The said party of the first part, in consideration of the sum of money to be paid by the said party of the second part as here-
144 inafter mentioned, and the covenants and agreements hereinafter recited to be kept and performed by the said party of the second part, does hereby covenant, promise, and agree, to and with the said party of the second part, that the said party of the first part, shall and will in a good and workmanlike manner, and according to the best of his art and ability, do and perform the following work and provide all necessary labor and materials for the same, that is to say, for a court-house to be erected at the town of Vienna, Johnson county, State of Illinois, the whole of said work is to be performed and all the said materials furnished in conformity with the plans and specifications of the same made by Meriam and Norgnet, architects, of Chicago, Illinois, and amended by the county court of Johnson county, Illinois, and under the direction of a superintendent appointed by the said county court of Johnson county, which plans and specifications are to be considered as forming a part of this agreement, as if herein fully written and drawn.

The said party of the first part further agrees that the work aforesaid shall be completed on or before the first day of Novem-
145 ber, eighteen hundred and seventy; and furthermore, that no charge of any kind shall be made by the said party of the first part to the said parties of the second part beyond the sum hereinafter mentioned to be paid for said work unless the said party of the second part and the said superintendent shall alter the afore-

said plans and specifications, in which case the value of such alterations shall be added to the amount to be paid under this contract or deducted therefrom, as the case may require, it being expressly understood that no extra work of any kind shall be performed, or extra materials furnished by the said party of the first part unless first authorized by the said parties of the second part, and the said superintendent in writing, and that the said parties of the second part, and the said superintendent may from time to time make any alterations of, to, and in said plans and specifications upon the terms aforesaid.

The said parties of the second part, in consideration of the materials being furnished and the labor done as herein required, and all other of the stipulation, requirements, and matters and things
146 herein set forth being kept and performed by said party of the first part, covenants, promises, and agree to and with the said party of the first part, that they will well and truly pay, or cause to be paid, unto the said party of the first part the sum of twenty-seven thousand three hundred dollars ($27,300), in the manner following: The aforesaid amount to be paid in county bonds in the said Johnson county, in four equal installments, the first on the commencement of the work, the second when one-third of the work shall be accomplished, the third when three-fourths of the work shall be accomplished, and the fourth and final payment when the work shall be wholly completed and occupied by the county court of the said Johnson county, the party of the first part giving good and sufficient security for the proper application of all money or bonds advanced in payment for said work.

And it is hereby further agreed that if at any time during the progress of the work it shall become manifest to the superintendent or the party of the second part that said work is not being carried forward with sufficient rapidity or thoroughness, or that the
147 labor and material furnished by the party of the first part are unsatisfactory and insufficient for the completion of the work within the time and in the manner stipulated in the plans and specifications aforesaid, they shall give notice of such insufficiency and defects in progress or materials to the party of the first part, and if within three days thereafter such insufficiency and defects are not remedied the party of the second part may enter upon the work and suspend or discharge said party of the first part and all employed under him, and carry on and complete the work as they may elect, and the expense thereof shall be chargeable to the said party of the first part and be deducted from any sum which may be due him, and the opinion of the aforesaid superintendent shall be final, and his certificate in writing conclusive evidence between the parties hereto on all questions and issues arising out of this article of this agreement.

In witness whereof, the parties aforesaid have hereto set their hands and seals, the day and year first above written, to this and one other instrument of like tenor.

N. L. WICKWIRE. [SEAL.]
CHAS. I. HAM. [SEAL.]
I. N. PEARCE. [SEAL.]

Executed and delived in presence of—
S. P. PEABODY.
Cairo, Ill's, Dec. 8, 1869.

148 It is further mutually agreed and understood by the parties hereto that the party of the first part shall take all material furnished and pay for all labor performed by the parties of the second part prior to this date, at actual cost to the said parties of the second part.

149 (DEFENDANTS' TESTIMONY.)

Testimony of Isaac N. Pearce.

Circuit Court United States, Southern District of Illinois.

CHARLES I. HAM
v.
ISAAC N. PEARCE and ANDREW J. KUYKENDALL. } In Chancery.

Personally appeared before me, J. A. Jones, master in chancery of said circuit court, at my office, in Springfield, in said district, on the 22d July, 1875, Isaac N. Pearce, witness for defendants.

ISAAC N. PEARCE, being first duly sworn, deposes and says:

I reside in Vienna, Illinois, and am one of the defendants herein. I identify the contract attached to deposition of Charles I. Ham, and marked Exhibit A, as the original contract. Mr. Wickwire never gave any bond to me
150 or to any one else that I know of under said contract. In the spring of 1872, at St. Charles Hotel, Cairo, I have no recollection of saying to Mr. Ham if he would come up to Vienna he should have his share in the profits of the court-house contract, or that it should all be fixed up satisfactorily. I think Mr. Ham was in Vienna within a few days after I saw him at Cairo. I don't remember that he demanded of me any share of the profits in the court-house contract. There was a conversation between him and I in relation to his interest in the court-house. I told him then, if he had any interest, it was in the hands of Mr. Kuykendall. He remarked, he knew that. Said to me, if I had got his interest he would say no more about it, or something to that effect. Mr. Kuykendall should not have it if he could help it.

Cross-examination:

I never asked any bond of Mr. Wickwire after this contract was made. I don't remember that I did. I never placed my refusal to deliver these bonds to Mr. Wickwire on the ground he had not executed a bond.
151 He never demanded any bonds from me. I guess Mr. Wickwire commenced to draw orders on my store soon after he commenced work. He did not trade out the full amount of these bonds. I paid him in money and bonds the full amount due him. I got, as I understood, half the profits—what he said was half the

profits. I don't know that my recollection is very good. I have had a great many things on my mind since then.

I. N. PEARCE.

Subscribed and sworn to before me, this 22d July, 1875.

J. A. JONES,
M. C., U. S. C. C. South. Dist. Ills.

(Endorsed:) Filed July 22, 1875. J. A. Jones, clerk.

152 The depositions of Andrew J. Kuykendall and Isaac N. Pearce, of Vienna, in the county of Johnson, in the State of Illinois, witnesses of lawful age, produced, sworn, and examined upon their corporal oaths on the twenty-sixth day of June, in the year of our Lord one thousand eight hundred and seventy-five, at the office of John S. Crum, clerk of the circuit court in and for the county of Johnson, in the State of Illinois, in the court-house in the town of Vienna in said county and State aforesaid, witnesses in a certain suit and matters in controversy now pending and undetermined in the circuit court of the United States for the southern district of Illinois, wherein Charles I. Ham is complainant, and Isaac N. Pearce and Andrew J. Kuykendall are defendants, in behalf of the said defendants as well upon the cross-interrogatories, of the complainant, as on the interrogatories of the defendants, and upon none others. The said Andrew J. Kuykendall and Isaac N. Pearce, each being first duly sworn by me as witnesses in said cause, previous to the commencement of their examinations, to testify the truth as well on the part of the defendants as the complainant in re-
153 lation to the matter in controversy between the said complainant and defendants so far as they should be interrogated, testified and deposed as follows:

Interrogatories propounded to the said Andrew J. Kuykendall, a witness produced and sworn as aforesaid on the part of the said defendants, and his answers thereto, as follows:

Testimony of Andrew J. Kuykendall.

The deposition of ANDREW J. KUYKENDALL, who, being duly sworn according to law, deposed as follows, to wit:

Interrogatory 1. State your name, age, place of residence, and occupation.

Answer. My name is A. J. Kuykendall; my age is 60 years; my place of residence is Vienna, Johnson county, State of Illinois; my occupation is farming.

Int. 2. Are you acquainted with the other parties to this suit?

Ans. I am.

154 Int. 3. State all about your connection with the building of the court-house in the town of Vienna, if any, and in what way you became connected with the contract with J. K. Frick and the county court.

Ans. I think it was in the summer or fall of 1868 that Joseph

K. Frick entered into a contract with the county court of Johnson county to build a court-house in said county; according to the stipulations of that contract said Frick was to give a bond and security for the faithful performance of the contract in the sum of twenty thousand dollars. I signed that bond as his security. Said Frick failed to commence and prosecute the work, as specified in the contract, for the space of near twelve months. He then notified me that owing to the misunderstanding between him and the county court, he should do no further work under the contract, and that I, as his security, could go on and build the court-house if I wished to; and he left, and if he has ever returned to the county since I do not know it. I then assigned the contract for the building of the court-house soon after, as Frick's attorney, agent, or bondsman, to Ham & Pearce (Ham being the complainant in this suit, and Pearce one of the defendants); they commenced and done some work in the fall of 1869—a few hundred dollars' worth; they excavated the foundation and hauled up some rock; there was no more work done;
155 it seemed to be stopped. I had heard that Ham and Pearce had made a contract with some man in Cairo to go on and build the court-house; becoming uneasy with the delay, I called in Mr. Pearce some time in March, 1870, to know what the delay was, why the work was not progressing; he informed me that they (Ham & Pearce) had let the contract to Mr. Wickarie, of Cairo, and that Mr. Wickarie had been up and had declined to go on with the work under the contract between himself and Ham & Pearce.

Compl't objects to this part of answer.

Int. 4. Please state what further conversation occurred between yourself and Mr. Pearce relative to the Ham & Pearce contract under the assignment, if there was any.

(Complainant objects.)

Ans. There was a further conversation between us. I stated to Mr. Pearce that I had no bond from him and Mr. Ham for the performance of their contract under the assignment, and that I was on a bond of twenty thousand dollars for Frick for the faithful performance of the contract with the county, and that the time for which it was to be built under the contract would be out in the fall, and that the work must be commenced. Mr. Pearce stated to me that he did not see how he could possibly go any further with
156 the work, giving me many reasons which I leave for him to state, and asked me if I would not take back the contract with him and Mr. Ham, and pay them the cost for work done and materials furnished.

I told him I would do so if he would go to Cairo with me to see Mr. Wickarie, and assist me in trying to get the same contract with Mr. Wickarie about building the court-house that him and Mr. Ham had with Mr. Wickarie, which Mr. Pearce promised to do. I then told Mr. Pearce that if he would assist me in getting the contract with Mr. Wickarie, and assist me through the store in paying for work and material on the court-house, when the contract was com-

pleted, if there was any money made or saved, I would pay him well for his trouble, or divide profits with him, one or the other of these words; that was the end of that conversation.

Int. 5. State whether you and Mr. Pearce went to Cairo; and, if so, did you see Mr. Wickarie; and, if so, what was the conversation relative to the court-house contract.

(Complainant objects to that part of the interrogatory relative to conversation.)

Ans. Some time in March, 1870, after the conversation above alluded to with Mr. Pearce, we went to Cairo, and there met
157 Mr. Wickarie, and we had a conversation about the building of the court-house. I asked Mr. Wickarie if he would go on and build the court-house, as he had agreed with Mr. Ham & Pearce, if I would take or negotiate the bonds and furnish him the money to build the said court-house with, as the work progressed, and guarantee to him 90 cents to the dollar on the bonds, and he said he would. I told him, then, to come on and go to work.

Int. 6. State whether Mr. Wickarie did come and go to work on the court-house, under the understanding between you and Mr. Wickarie at Cairo; and did he complete the house according to contract; and, if so, did you and he settle?

(Complainant objects to interrogatory.)

Ans. He did come within a few days, commence the work, prosecuted it to completion. I settled with him and paid him in full for said work.

(Cross-examination by compl't:)

Cross-interrogatory 1. State whether you were acquainted — Frick before he entered into the contract spoken of with the county court; and, if so, how long before then?

158 Ans. I have no recollection of meeting Mr. Frick but once before he came to Vienna to take the contract; I met him once at Anna a few weeks before he came here to take the contract, and after the court-house had been advertised to be let.

No. 2. At what price was Mr. Frick to build the court-house at the time you went upon his bond as security?

Ans. It appears from the record that he was to have $38,357 in county bonds.

No. 3. At what time did you enter into this bond?

Ans. I have no recollection of the time, but the record shows that it was on the 5th day of August, 1868, and I presume it is correct.

No. 4. State whether or not changes were made in the specifications of contract between Frick and the court, as agreed upon between Frick and the court on that day; and, if so, how much was the price reduced from what Frick had originally bid?

Ans. There were alterations made in the specifications, and the price was reduced from $40,800 to $38,357, as appears from the record.

159 No. 5. At what price was he to build the court-house at the

time you went upon the bond, whether it was for the $40,800 or the $38,357?

Ans. My recollection is it was for the $38,357 when I went upon the bond.

No. 6. Did you or did Mr. Frick suggest those changes?

Ans. I did not suggest any of them; Frick and the court were working at it when I came in, and L. Wm. Fein was figuring for them; I do not know who did suggest them.

No. 7. You speak of a misunderstanding between Frick and the court; what do you mean by the misunderstanding?

Ans. I can just give you Mr. Frick's version of it in short detail; after the papers had all been signed up and the contract entered into some time after, about the time the injunction was dissolved, Frick stated that he had suggested to the court that his business had been drawing plans for court-houses and building them, and that he could draw them a much better plan and specifications for a court-house than the one they had adopted, and, if they said so, he would draw the plan and specifications and
160 present them to them, and they told him to do so; he did draw them and present them to them, and they stated to him that they liked the plans much better than the original, and that when he came on and got ready to go to work that they would have a meeting of the court and adopt his plan in place of the original; and on the faith of that promise he had made a contract with parties in Evansville, based upon his specifications, to build the court-house by said contract; he (Frick) made $3,000 by reletting the court-house; that when he came to Vienna with the parties that he had contracted with, for the purpose of commencing work on the court-house, the court called a meeting, and at that said meeting refused to adopt his specifications, as they had promised him; this was in August, 1869, to the best of my recollection.

No. 8. State whether you received the first installment of the county bonds under Frick's contract; and, if so, when it was, and the amount.

Ans. I received them, I believe, in December, 1868; they bore date the seventh day of December, 1868; there were $9,500 of them, to the best of my recollection; they were payable six years after issuing, drawing ten per cent. interest, payable annually.

161 No. 9. When did you receive the next installment of these bonds, and how many did you receive?

Ans. I received the next installment in September, 1870; the amount was one-fourth of the contract price of $38,357.

No. 10. When did you receive the third installment of the bonds, and what amount did you receive?

Ans. I think it was in December, 1870, I received the third installment, being one-fourth of the said contract price.

No. 11. When did you receive the next and last installment, and what amount?

Ans. It was in January or February, 1871; the amount was one-fourth of the said contract price.

No. 12. State whether you have received the sum of $38,357 from

the county court of Johnson county, the price for building the court-house, in said bonds, or their equivalent; and, if so, whether received in these four installments mentioned.

Ans. I received the contract price in these four installments, and none other.

162 No. 13. State whether you was receiving them for yourself or for Frick.

Ans. I received them in the capacity of Frick's agent, bondsman, or attorney.

No. 14. At what time was it that Frick notified you of the misunderstanding of the court and him, and that he should not further prosecute the work?

Ans. To the best of my recollection, I received it some time in August, 1869.

No. 15. How did he notify you?

Ans. In person, verbally.

No. 16. How did he authorize you, as his security, to go on and build the court-house?

Ans. At the time that he notified me there was nothing said about any authority more than I have stated. When I signed his bond at the completion of the contract, he came into open court and stated to the court, that he authorized me to receive and receipt for the bonds as his attorney or financial agent, and it was from that authority, together with what he stated to me at the time he declined further work, that I might go in and finish the court-house if I wished; being bound as his security for the faithful per-

163 formance of the work upon the contract, that I took the authority to do all I did do in the premises.

No. 17. Did he ever execute to you an assignment of his interest in the contract or notify you in writing that you could go on with the building if you wished?

Ans. He did not.

No. 18. Were you present when the eight changes were made in the plans and specifications above mentioned, on the 9th day of September, 1869?

Ans. I have no recollection of being present, but I presume I was, as I see I have signed Joseph K. Frick, by A. J. Kuykendall, his attorney, on the record, at least it is in my handwriting.

No. 19. Who suggested those changes?

Ans. I do not know.

No. 20. Had Frick abandoned the contract at this time?

Ans. I so taken it from what he said to me when he left, and acted accordingly.

No. 21. How did you assign the contract, and at what time was it assigned?

Ans. I assigned it as attorney, or agent; it was done some time in September, 1869.

164 No. 22. Was it before or after the changes were made on the 9th of September, 1869?

Ans. I cannot say; it was not far from the same time.

No. 23. If Frick had abandoned the contract, state why it is that

you afterwards signed the agreement to these changes and receipted for bonds as his attorney?

Ans. I felt that I was bound on my bond between Frick and the county court for the completion of the court-house, and from the authority that he had gave me while here, and me being his bondsman, I felt I had a right to use his name as an attorney or agent in any way that I thought necessary to fulfill his contract as such bondsman, so as to relieve myself from liability on said bond.

No. 24. State what remuneration you were to pay, or what arrangement you had with defendant Pearce as to the profits arising from the building of the court-house under the contract with Wickarie?

Ans. None whatever, more than I have stated in my examination-in-chief.

No. 25. Was he not to have one-half of the profits?

165 Ans. As I stated in my examination-in-chief, if he would assist me, as I stated there, that I would pay him for his trouble, or divide profits with him, if any; I cannot say which one of the propositions I used, but am satisfied it was one of them.

No. 26. Was he or was he not to have one-half the profits?

Ans. I cannot state any further than I have stated.

No. 27. When you went to Cairo to see Wickarie was a contract written up between you and him for the building of the court-house?

Ans. There was not.

No. 28. Was the contract between him and Ham & Pearce delivered up then?

Ans. It was not; nothing said about delivering it up.

No. 29. When was that contract first delivered to you?

Ans. The best of my recollection when Mr. Pearce notified me that he could not proceed further with the contract, he brought one which he said was a copy of the contract, and purported to be one on its face, between Ham & Pearce and Wickarie; he gave it to me; that was some time in March, 1870.

166 No. 30. Have you ever received any other copy of the contract, or any other contract between these parties.

Ans. I do not recollect when Mr. Pearce first gave me the copy. I gave it back to him to put in his safe, and when I was about to settle with Wickarie I went down after it and got a copy, which I presume was the same one. I would not say that I did not receive a copy from Mr. Wickarie. I have an impression that Mr. Wickarie gave me his copy of the contract at Cairo after the final settlement with him for building the court-house, and I remarked to him that I had a copy, and either he or I put it in the stove and burned it.

No. 31. State whether you ever paid any of profits made on the court-house to Frick.

Ans. I did not.

No. 32. State whether you ever paid over to Ham & Pearce the $9,500 in county bonds, or $9,500 in money, agreeable to the terms of the assignment made by you, as Frick's attorney, to Ham & Pearce.

Ans. I paid over the major part of the first payment, but not all, soon after making the assignment.

No. 33. About how much did you pay and who to?

167 Ans. I paid over between $8,000 and $9,000 to Isaac N. Pearce in county bonds.

No. 34. State whether Pearce ever paid them back to you.

Ans. He accounted for them on settlement.

No. 35. What were the profits on the court-house after settling off with Wickarie, as near as you can state?

Ans. After defraying all the expenses of carrying on the contract, negotiating bonds, &c., I had left seventeen or eighteen bonds, to the best of my recollection.

No. 36. How much money did you pay Wickarie?

Ans. In the neighborhood of twenty thousand dollars.

No. 37. How much did you pay him in bonds?

Ans. Between seven and eight thousand dollars.

No. 38. Did he take this seven or eight thousand dollars in bonds in part payment for building the court-house, and at what price?

Ans. He took them that way and at their face.

No. 39. Was he to build the court-house under your ar-

168 rangement with him on the same terms that he was to build it for Ham & Pearce?

Ans. The same, except I was to furnish him money to complete the court-house and take his bonds for it at 90 cents to the dollar.

No. 40. He was to receive $27,300 or $27,400 in bonds for building the court-house, but you was to pay him 90 cts. on the dollar for the bonds, excepting the amount between $7,000 and $8,000, which you have spoken of, that he received in final settlement.

Ans. My recollection is that he was to have $27,300 or $27,400 for building the court-house, as appears from the written contract between him and Ham & Pearce, and I agreed with him to furnish him with money to complete the court-house and take his bonds for the amount of money I furnished, allowing him 90 cents to the dollar, and after the court-house was completed and the cost ascertained, if there was any balance due him he was to take it in bonds at par, and this amount between $7,000 and $8,000, of which I have spoken, was the balance remaining due him on the completion of the court-house, which he taken at par.

No. 41. Was Wickarie charged up with the cost of the work and material already done and furnished by Ham & Pearce; and,

169 if so, what did it amount to?

Ans. He was charged up with the work and material in the settlement between him & I, but I have no recollection of the amount; could not even ap-roximate to it. Mr. Pearce kept the books.

No. 42. Wickarie's contract price, then, was to cover the whole actual cost of the building the house according to the contract between Frick and the court, was it not?

Ans. It was.

No. 43. When you went to Cairo to make this arrangement with Wickarie was not your motive more to make money out of the thing than simply to protect yourself as security on Frick's bond?

Ans. It was not.

No. 44. Did you then believe that if the house was not built on the Frick contract that you would be prosecuted as Frick's security?

Ans. I did.

No. 45. Up to the time of that arrangement, what was the extent of your acquaintance with Wickarie?

Ans. I had no acquaintance; had never seen him to my knowledge before.

170 No. 46. You say that you did not reduce that contract or arrangement with Wickarie to writing. I will ask you why you did not?

Ans. I do not know that I can give the reason. I might say this: The contract between Wickarie and Ham & Pearce was in writing, and gave the details of the building, and on my promise to furnish the money Wickarie did not ask me to reduce it to writing.

No. 47. I will ask you if you have not been a lawyer by profession, and how many years you had practiced before that time.

Ans. I had been a lawyer by profession. I had practiced twelve or fifteen years before that time.

No. 48. Did you divide the proffits of the court-house contract with Pearce; and, if so, how much did you let him have?

Ans. I did divide the proffits with him on a final settlement with Pearce, and paying him off. He had a large account for money, goods, and orders that I had drawn on him to the amount of somewhere over twenty thousand, and the proffits, whatever the amount it was, was included in that account. My impression is that it

171 was somewhere in the neighborhood of three or four thousand dollars. My recollection is that at a final settlement he was allowed one-half of the net proffits.

No. 49. You say you have not paid Frick any of the proffits arising from the court-house contract. I now ask you if you consider that you owe him any of the proffits; and, if so, how much?

Ans. I do not consider I owe him any.

No. 50. A. J. KUYKENDALL.

The foregoing deposition was subscribed by A. J. Kuykendall and sworn to by him before me, this 26th day of June, 1875.

[L. S.] JOHN S. CRUM,
Clerk of the Circuit Court of Johnson Co., Ills.

Testimony of Isaac N. Pierce.

The deposition of ISAAC N. PEARCE, who, being duly sworn, deposed as follows, to wit:

Interrogatory 1. State your name, age, occupation, and place of residence.

Ans. My name is Isaac N. Pearce; my age is 52 years; my occupation is hotel-keeper; and my place of residence is Vienna, Johnson county, Illinois.

172 No. 2. Are you acquainted with the other parties to this suit?

Ans. Yes.

No. 3. State if you entered into partnership with Mr. Ham for the purpose of taking the assignment of the Frick contract for the building of the court-house in the town of Vienna?

Ans. I did.

No. 4. State if you are a mechanic of any kind.

Ans. I am not.

No. 5. State if you understood Mr. Ham to be a mechanic, and understanding house building; and, if so, was that the inducement, or a part of the inducement, that caused you to enter into partnership with him for the purpose of taking said contract?

Ans. I understood from Mr. Ham that he was a joiner and carpenter by trade; that of course had something to do with my entering into partnership with him.

No 6. State if there was any understanding at the time you taken the contract with Mr. Ham that he was to give the building his personal attention.

Ans. My understanding was that he was to take the super-
173 vision of the building, the mechanical part of it.

No. 7. After the assignment was made how soon did you commence work?

Ans. I don't remember the number of days; I think within ten or twelve days; a very few days, anyway.

No. 8. How long did you prosecute the work?

Ans. I do not remember exactly; I would sa- a month and a half, or two months.

No. 9. State if Mr. Ham gave his personal supervision or personal attention to the work for the time of which you speak.

Ans. Mr. Ham did a portion of the time.

No. 10. State about the time that Mr. Ham and yourself entered into a contract with Mr. Wickarie for the completion of the work on the said court-house, if any such contract was entered into.

Ans. My recollection is about the first of December, A. D. 1869.

No. 11. State at the time, or soon thereafter that you entered into said contract, was there or not any understanding between you and
Mr. Ham that he was to be on the ground and to give his
174 personal attention to the supervision of the work while it was going on under the contract that you and him had made with Wickarie.

(Complainant objects.)

Ans. The contract referred to was entered into at Cairo. I think it was as we come up from Cairo, on the railroad. I was coming home. Mr. Ham was on his way to Cincinnati, he said; he told me on the train before we parted that he had some railroad matters to settle up; he would go and attend to them, and get back here in time to take the supervision of the work when spring opened, so we could go to work.

No. 12. State what time Mr. Ham did return to Vienna, if he did so return, before the completion of said work.

Ans. I never saw him here afterwards, until after the work was completed.

No. 13. State if you saw Mr. Wickarie after the contract entered into between Mr. Ham & yourself with said Wickarie; and, if so, when and where; and if there was any conversation between you and Mr. Wickarie relative to the said contract for *for* building the court-house; and, if so, please state that conversation.

Ans. Mr. Wickarie was here—I think it was in February, 1870; I showed him the work and materials that we had, and he
175 seemed to be discouraged; he asked me if I had any news from Mr. Ham; I told him I had written Mr. Ham, but had received no reply; he then told me he did not see how he could progress with the work; said he had no money; that Mr. Ham had told him, at the time the contract was entered into, that he would take $5,000 of the business. He also stated that he had written Mr. Ham, and he had received no reply from him; he said he could not go on with the work under the contract unless he could cash the bonds, or enough of them to build the court-house. He left the impression on my mind that he would not return to prosecute the work.

Compl't objects to this part of answer.

No. 14. State if you had a conversation with Kuykendall, and when, about the delay of the work on the court-house; and, if so, state that conversation.

(Compl't objects.)

Ans. Mr. Kuykendall came to my store about the first of March, 1870, and asked me what I was going to do about starting the work on the court-house. I told him then that I had written Mr. Ham, but could get no reply, and that I was not able to start the work myself; that I knew nothing about the work—had not the means to prosecute it—and asked him for to take the job off of our hands, and pay for what work we had done and material furnished, and com-
176 plete the job himself; he then told me if I would go to Cairo with him & Mr. Wickarie, would complete the job for the same price—that he would take it off of my hands; he remarked at the same time that the work must commence; that there was only about six or seven months til the time expired that the court-house should be completed, according to the contract.

No. 15. You can now state if you went with Kuykendall to Cairo to see Wickarie, and if there was any arrangement made between Wickarie and Kuykendall for the prosecution of the work; what that arrangement was, if you know.

Ans. I did go to Cairo with Mr. Kuykendall to see Mr. Wickarie; we saw Mr. Wickarie in Cairo; he agreed with Mr. Kuykendall to come on and complete the court-house and finish the job, provided Mr. Kuykendall would furnish the money to build the court-house and pay for the work as it progressed, and take his bonds at 90 cents to the dollar.

No. 16. You will now state whether or not Mr. Wickarie, under

the arrangement made with said Kuykendall, did come on and go to work and complete said court-house.

Ans. He did.

No. 17. State, if you know, on the completion of said court-
177 house, that Kuykendall and Wickarie had a settlement concerning said work, and that said Kuykendall paid the said Wickarie in full for the said contract, according to the arrangement made with said Wickarie, before spoken of.

Ans. Yes; he settled, and Mr. Wickarie seemed to be satisfied with the settlement.

No. 18. You can state if Kuykendall accounted to you, on a settlement of the court-house matter, for the work and material furnished by Mr. Ham and yourself that was done before you turned the contract back to Kuykendall.

Ans. Yes.

No. 19. You can state now what the amount of that work and material was, and what amount was paid for by you and what amount by Mr. Ham.

Ans. The work that was done cost a little over $500; the material cost between $700 and $800; the whole amount was some twelve or thirteen hundred dollars; I paid for all of it, I believe.

No. 20. Mr. Jackson spoke in his deposition that Mr. Ham had teams at work on the court-house hauling rock; if so, if there was any understanding between you and Mr. Ham about the work or feed of said teams, please state it.

178 Ans. Mr. Ham had three or four teams that he proposed to put in to hauling stone; he proposed with me that if I would furnish the feed and pay the drivers for driving that he could make no further charge for the use of the teams; I paid the feed bills and paid the drivers.

No. 21. Was you present when Samuel Jackson's deposition was taken in this case; if so, I will call your attention to that part of his deposition in which he states that you should have said on board of the cars at Cairo, on the Ill's Central R. R., that if Mr. Ham would come to Vienna that you would see that he got his rights in the court-house or his share in the proffits, or something to that effect, some time in 1872; did you ever make such statement to Samuel Jackson or any other person at the time spoken of?

Ans. I have no recollection of it.

No. 22. Do you think such conversation passed between you and Mr. Jackson; and, if you think not, please state the reasons that make you think so, if any you have.

(Complainant objects.)

Ans. I think it would be unnatural for me to make such an ex-
179 pression, for the reason that I, at no time, had control of his interest, if he had any, and I had been twice sued in the circuit court concerning his interest or for his interest.

No. 23. I will ask you if you recollect a conversation between yourself and Kuykendall, soon after the work was commenced on the court-house by Wickarie, about you going to see Mr. Ham, and

if you recollect said conversation; did or did not Kuykendall state to you if you went to see Mr. Ham and did see him that you might say to him that if he would come on immediately and take charge of the work and finish up his contract according to the original agreement that you and him might still go on with the contract?

(Complainant objects.)

Ans. I remember having a conversation with Kuykendall in in April after the work commenced. Kuydendall did make that proposition to me to tell Mr. Ham.

No. 24. Did you go to see Mr. Ham; and, if so, when; and did you see Mr. Ham, and did you tell him in any conversation you had with him about the court-house job the proposition that Kuykendall was willing for him to go on with the contract, or anything to that effect; and, if so, what was Mr. Ham's reply?

180 Ans. I went to see Mr. Ham between the 25th and 30th of April, 1870. I saw him and had a talk with him. He said to me that he did not wish to release his interest in the court-house contract, but that he could not come here, or would not come here, (I do not know which word he used,) unless the Cairo and Vincennes Railroad Company paid off their indebtedness, which he thought there was some prospect of their doing soon. In case they paid, he would get through with the work he was then engaged in in four or 5 weeks; then he would come. That if he was not here by first of June next I might consider him out of the contract, was about the remark he made. I stayed all night with Mr. Ham; I told him all about the facts in the case; I told him Kuykendall's proposition.

No. 25. Now, you may state if Mr. Ham did come to Vienna by the first of June, or any other time during the progress of the work on the court-house, or did you hear from Mr. Ham after that and before the completion of the work, by letter or otherwise?

Ans. He did not come by the first of June, or at any other time before the completion of the work. If I received a letter from him, I do not know it.

(Cross-examination by compl't:)

181 Cross-int. 1. State if you did not first speak to Mr. Ham about taking this contract before you took it.

Ans. My impression is that I did.

No. 2. Did you not bring the written plans and specifications to his office for him to examine?

Ans. I don't remember whether I took them there myself or not. They were there, and it is likely I took them.

No. 3. Did not Mr. Ham, after examining them, tell you that, as they then were, no money could be made out of the contract; but that if the court would consent to some changes being made, that he would go in with you and take the assignment of the contract?

Ans. I don't remember. There was a good deal of conversation about it; there were changes suggested and finally made. I think he was a day or two examining them.

No. 4. Were you not present in the county court on the 9th of September, 1869, when changes were agreed to; and, if so, did not Mr. Ham suggest the changes, and did he not explain the changes to the court in open court?

Ans. I was present, and think he did.

182 No. 5. State whether those changes were not of advantage to the builder, and would it not require a mechanic or builder of experience and skill to devise those changes?

Ans. I do not know that I am competent to answer that question, but I suppose they were of advantage; Mr. Ham said so, and I believed him.

No. 6. Was it not the arrangement between you and Mr. Ham, when you took the assignment, that he was to superintend the mechanical part of the work and you the financial part?

Ans. That was the arrangement; he was to superintend the mechanical part and I was to do the paying out.

No. 7. State if Mr. Ham did not quit work because the season was so far advanced that it could not be further prosecuted that fall on account of bad roads for hauling rock, excavating, &c.?

Ans. I think that is what he quit for.

No. 8. Was it not by your consent that Mr. Ham took the plans and specifications off to see if he could not advantageously sublet the contract to another party?

183 Ans. If he asked me anything about it, I consented; but I do not remember about it.

No. 9. Did you not go to Cairo in response to a letter from Mr. Ham relative to subletting the contract of building the court-house?

Ans. I did.

No. 10. Did you not enter into that contract with Wickarie, fully satisfied with the arrangement Ham had made, and convinced that you would make a large proffit out of it?

Ans. Yes; I was satisfied, and supposed we would make some money.

No. 11. Was it not the arrangement that Wickarie was to commence work in the spring as soon as the weather would permit?

Ans. It was.

No. 12. Did you object to Ham's leaving in December?

Ans. I did not, with the understanding that he would return in the spring.

No. 13. After subletting the contract to Wickarie, did he come back to Vienna from Cairo?

Ans. He did, not at that time, when I came.

184 No. 14. State when Mr. Kuykendall paid you the first installment of the county bonds, and how much he paid you.

Ans. He paid them to me soon after we took the contract; a few days after. I cannot remember the amount; there were fully $8,000, or perhaps a little more. The whole amount of the installment was satisfactorily arranged between us. There was $415 $\frac{21}{100}$ in a special order that he paid me, besides the bonds he let me have.

No. 15. Did you not collect this $415\frac{81}{100}$ in September of 1869?

Ans. I think I did.

No. 16. Did you not pay for the $800 material that you speak of in bonds at par?

Ans. I think I did.

No. 17. Did you not pay them to Col. Hess after Wickarie had gone to work on the building?

Ans. I paid it before—some time in the winter; there was snow on the ground when we measured up the lumber.

No. 18. Did you pay out the bonds when you measured the lumber?

Ans. I did; the same day.

No. 19. How much money did you pay out on the work
185 done by you and Ham, and when did you pay it?

Ans. My recollection is that it was a little over $500; I paid it after we commenced work at the end of each week.

No. 20. Did you not have the bonds while the work was going on, and did you not receive interest on the bonds in December, 1869?

Ans. I had, but did not receive any interest.

No. 21. What became of the coupons that were on the bonds that were due?

Ans. My recollection is that when the bonds were negotiated the coupons went with them.

No. 22. State if at the time you received these bonds from Kuykendall the accrued interest was not charged against you and Ham.

Ans. I do not remember whether it was or not.

No. 23. Were those bonds in your possession at the time Wickarie came to see you in February, 1870, that you speak of?

Ans. They were in my safe.

No. 24. Had you held these bonds with one year's interest due upon them in December before then, and made no effort to collect the interest?

186 Ans. I don't think I had disposed of any of the bonds or collected any interest; if I had, I don't remember it.

No. 25. Did you tell Wickarie then that you had the bonds, and that he could take a portion of them and commence work upon the house?

Ans. I don't know whether I did or not.

No. 26. Did you then make a tender of any bonds to Wickarie, apply for the interest on the bonds then due to advance him, or tell him that there was $800 then due upon the bonds?

Ans. I could not say that I did; I do not remember.

No. 27. You say in your examination-in-chief that after you showed Wickarie the work and material at that time, and he seemed to be discouraged; is it not true that you first talked to him discouragingly about the matter, and represented to him that you wanted to stop the matter and abandon the contract?

Ans. I don't think there was anything of that kind done; I don't think I talked to him discouragingly first or last at that time; I don't think I intimated to him at all that I wanted to give up the

187 contract at that time, and I don't know that I did at any other time.

No. 28. When Wickarie left, did he tell you that he would not return?

Ans. He said to me that he could not go on and complete the job unless there could be some arrangement made up to raise the money more than he could see.

No. 29. Did you pay those $8,000 in bonds back to Kuykendall?

Ans. I don't think I paid them back to him; they remained in my safe until Mr. Kuykendall made a negotiation with Mr. Howick, and I gave them to Mr. Howick.

No. 30. Did you account to Kuykendall for them; if so, when?

Ans. I did, for the value of them, in spring and summer of 1870.

No. 31. When did you have your settlement with Kuykendall?

Ans. We had a final settlement about the work in January or February, 1871.

No. 32. Did you write more than one letter to Mr. Ham relative to this court-house matter?

Ans. I think I wrote two.

188 No. 33. When was the first written, and when the next?

Ans. It was in the winter of 1870. I think I wrote one before Mr. Wickarie came up here to commence work and one afterwards.

No. 34. State the substance of the first one, and also of the second.

Ans. I don't know that I can give the substance of it; it has been over five years ago; the first letter, my recollection is, was relative to other business, part of it, and a part of it relative to this court-house building, asking him how soon he could be down to resume work on the building; it is impossible for me to state what all was in the letters; the second one, or a portion of it, was in relation to the building of the court-house.

No. 35. Did you or did you not, in either of these letters, inform Mr. Ham that Wickarie had abandoned the contract or was discouraged about going on with the work?

Ans. I don't think I wrote him that he had abandoned the contract. I would not like to say that was in it, because I cannot remember. I can go on a little further and state that my impression is that in each of the letters I urged him to hurry up

189 and get here so that we could push the work through.

No. 36. When you went to Indiana to see Ham, did you not state that Kuykendall had been of great assistance in negotiating the bonds, and that he, Kuykendall, wanted into the contract, and did you not then ask Mr. Ham if he was willing to let Kuykendall in for a one-third interest in the contract?

Ans. I don't remember that conversation.

No. 37. You will state if you did not at that time, in a little store-room of Ham's, in the presence of his inferior, Mr. Jewell, make this statement to Mr. Ham.

Ans. I have no recollection of it.

No. 38. Will you deny that you made such a statement?

Ans. (Witness refuses to answer the question, yes or no.) Because I don't recollect it.

No. 39. Did not Mr. Ham then tell you that he did not see any reason for giving up one-third of the interest in the profits, and that he considered that you had the building let to a responsible man who would finish the court-house according to contract?

Ans. I don't think I ever asked him to give up a third of
190 it, but asked him if he could not come on and assist in putting the work through, and, if he could not come, to release his interest.

No. 40. Did not Mr. Ham then tell you that if it was necessary to have Kuykendall to negotiate the bonds, he was willing to pay him a liberal per cent. for doing it?

Ans. He probably did.

No. 41. When you went to Indiana, did you inform Ham that you had surrendered the assignment and your contract with Wickarie to Kuykendall?

Ans. Yes, I think I did; that is what I went for, to give him the facts as they were; I was authorized by Mr. Kuykendall to tell him that if he would come on and go to work he could retain his interest; I told him that also.

No. 42. Will you swear positively that you told him that?

Ans. To the best of my recollection, I will.

No. 43. Did you not, just after your return, in reply to a question of James Burk, made here in Vienna, as to whether you had bought Ham's interest in the court-house contract, say, "No, that Ham had no intention of selling his interest," or words to that effect?

191 Ans. I expect that if he asked me anything about it, I did say that; I don't remember it, though.

ISAAC N. PEARCE.

The foregoing deposition was subscribed to by Isaac N. Pearce, and sworn to by him before me, on this 26th day of June, A. D. 1875.

[L. S.] JOHN S. CRUM,
Clerk of the Circuit Court of Johnson Co., Ills.

I, John S. Crum, clerk of the circuit court in and for the county of Johnson, in the State of Illinois, do hereby certify that, previous to the commencement of the examination of the said Isaac N. Pearce and Andrew J. Kuykendall as witnesses in said suit between the said Charles I Ham, complainant, and the said Isaac N. Pearce and Andrew J. Kuykendall, they were both duly sworn by me to testify the truth in relation to the matters in controversy between the said complainant and defendants, so far as they should be respectively interrogated concerning the same; that the said depositions were taken in my office, in the court-house, in the town of Vienna, in the county of Johnson, in the State of Illinois, on the twenty-sixth day of June, in the year of our Lord one thousand eight hundred
192 and seventy-five; and that after said depositions were taken by me as aforesaid, the interrogatories and answers thereto, as written down, were read over to the said witnesses respectively,

187 contract at that time, and I don't know that I did at any other time.

No. 28. When Wickarie left, did he tell you that he would not return?

Ans. He said to me that he could not go on and complete the job unless there could be some arrangement made up to raise the money more than he could see.

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No. 35. Did you or did you not, in either of these letters, inform Mr. Ham that Wickarie had abandoned the contract or was discouraged about going on with the work?

Ans. I don't think I wrote him that he had abandoned the contract. I would not like to say that was in it, because I cannot remember. I can go on a little further and state that my impression is that in each of the letters I urged him to hurry up

189 and get here so that we could push the work through.

No. 36. When you went to Indiana to see Ham, did you not state that Kuykendall had been of great assistance in negotiating the bonds, and that he, Kuykendall, wanted into the contract, and did you not then ask Mr. Ham if he was willing to let Kuykendall in for a one-third interest in the contract?

Ans. I don't remember that conversation.

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190 it, but asked him if he could not come on and assist in putting the work through, and, if he could not come, to release his interest.

No. 40. Did not Mr. Ham then tell you that if it was necessary to have Kuykendall to negotiate the bonds, he was willing to pay him a liberal per cent. for doing it?

Ans. He probably did.

No. 41. When you went to Indiana, did you inform Ham that you had surrendered the assignment and your contract with Wickarie to Kuykendall?

Ans. Yes, I think I did; that is what I went for, to give him the facts as they were; I was authorized by Mr. Kuykendall to tell him that if he would come on and go to work he could retain his interest; I told him that also.

No. 42. Will you swear positively that you told him that?

Ans. To the best of my recollection, I will.

No. 43. Did you not, just after your return, in reply to a question of James Burk, made here in Vienna, as to whether you had bought Ham's interest in the court-house contract, say, "No, that Ham had no intention of selling his interest," or words to that effect?

191 Ans. I expect that if he asked me anything about it, I did say that; I don't remember it, though.

ISAAC N. PEARCE.

The foregoing deposition was subscribed to by Isaac N. Pearce, and sworn to by him before me, on this 26th day of June, A. D. 1875.

[L. S.] JOHN S. CRUM,
Clerk of the Circuit Court of Johnson Co., Ills.

I, John S. Crum, clerk of the circuit court in and for the county of Johnson, in the State of Illinois, do hereby certify that, previous to the commencement of the examination of the said Isaac N. Pearce and Andrew J. Kuykendall as witnesses in said suit between the said Charles I Ham, complainant, and the said Isaac N. Pearce and Andrew J. Kuykendall, they were both duly sworn by me to testify the truth in relation to the matters in controversy between the said complainant and defendants, so far as they should be respectively interrogated concerning the same; that the said depositions were taken in my office, in the court-house, in the town of Vienna, in the county of Johnson, in the State of Illinois, on the twenty-sixth day of June, in the year of our Lord one thousand eight hundred
192 and seventy-five; and that after said depositions were taken by me as aforesaid, the interrogatories and answers thereto, as written down, were read over to the said witnesses respectively,

and that thereupon the same were signed and sworn to respectively by the said witnesses, at the place and on the day and year last aforesaid.

[L. S.] JOHN S. CRUM,
Clerk of the Circuit Court of Johnson Co., Ills.

(Endorsed:) Filed January 3, 1876. J. A. Jones, clerk.

193 Transcript from the records of the county court of Johnson county, Illinois, offered in evidence on the trial of the above-entitled cause, as follows, to wit:

Transcript from Johnson County County Court.

County Court Record "B" of Johnson County, Illinois.

Page 364 AUGUST, 1868.

At a special term of the county court of Johnson county Illinois, commenced and holden in the court-house in the town of Vienna, on Monday, the third day of August, A. D. 1868. Hon. J. B. Smith, judge, and James J. Hogg, Mark Whitaker, associate justice, and William Perkins, sheriff, and B. S. Smith, clerk, all present. Court opened by proclamation. Ordered by the court, that court adjourn till to-morrow, 8 o'clock.

TUESDAY MORNING, 8 *o'clock.*

Officers present as were yesterday. Court opened by proclamation.

194 Whereas, pursuant to notice, of which the following is a copy:

1. *Order Accepting Bid of J. K. Frick to Build Court-House.*

"Notice to Builders."

"Notice is hereby given that sealed bids will be received at the office of the clerk of the county court in and for the county of Johnson and State of Illinois, until the first Monday in August next, for building a court-house in the town of Vienna, in said county.

"The builder is to furnish all materials necessary for the building, and the house to be built and finished according to the plans and specifications on file in the office of the clerk of the county court of said county. Payment to be made in county bonds bearing ten per cent. interest, one-fourth to be paid in advance, the contractor giving satisfactory security for the building, and one-fourth when one-half done, one-fourth when three-fourths done, and the remainder when the building is completed and received by the county court of said county.

J. B. SMITH, *Judge.*
JAMES J. HOGG,
M. WHITAKER,
Associates.

195 The following sealed bids were received and opened, to wit:

1st. One from Frank J. Chapman and Hap, on least plan, for $47,000.00.

2nd. One from Jos. K. Frick, subject to improvements, $40,800.00.

On due examination and consideration of said bids, and it being found that Mr. Jos. K. Frick's bid was $6,200, the least. It is therefore ordered by the court that that this court accept the bid of Jos. K. Frick, to build said house, at the sum of $40,800. The special terms and conditions of the contract to be subsequently agreed upon, entered into writing, signed by the parties, and made a matter of public record on the record books of this court.

STATE OF ILLINOIS, } ss:
Johnson County, }

I, W. W. Boyt, clerk of the county court of Johnson county, in the State of Illinois, do hereby certify the above and foregoing to be a true, perfect, and complete copy of a certain order made by the county court of Johnson county, on the 3d day of August, A. D. 1868, as it appears of record on page 364 of county court record "B" of said county.

196 In testimony whereof, I have hereunto set my hand and official seal, this 25th day of July, A, D. 1875.

[L. S.] W. W. BOYT,
County Clerk of Johnson County.

2. *Contract between County Court and J. K. Frick.*

Articles of agreement, made and entered into this fifth day of August, 1868, between Joseph K. Frick, of the city of Cairo, State of Illinois, of the first part, and Jason B. Smith, county judge, and James J. Hogg and Mark Whitaker, associate justices of the county court, within and for the county of Johnson and State of Illinois, in the capacity and forming the county court within and for said county, of the second part:

Witnesseth, said party of the first part, for and in consideration of the covenant and stipulations hereinafter mentioned, to be done and performed by said party of the second part, the county court of Johnson county aforesaid, and their successors in office, does hereby, for himself, his heirs, executors, administrators, and assigns, covenant, promise, and agree to and with the said parties of the second part, that he,

197 the said party of the first part shall and will well and sufficiently build and finish in good workmanlike manner a court-house building for the said county of Johnson, in the State of Illinois, said court-house to be built on the center of the public square in the town of Vienna, agreeably to the plans and drawings & specifications this day filed in the office of the county clerk of said county of Johnson. Plans, drawings, mentioned as follows: No. 1, basement; No. 2, principal story; No. 3, 2d story; No. 4, longitudinal sections on line A, B; No. 5, cross section on line C, D; No. 6, elevation; and No. 7, front elevation, except the change in said plans and drawings, specially noted in the specifications filed with said clerk, which

said plans and drawings are made a part of these articles of agreement, and shall and will find, furnish, and provide all necessary materials of such kind, qualities, and description as shall be fit and proper and sufficient for the completing and furnishing the same; and that he will fully complete and furnish said court-
198 house in all respects in a good and workmanlike manner, ready for delivery on or before the first Monday in September, 1870, one thousand eight hundred and seventy, said house to be seventy feet long from north to south, and fifty feet wide, east and west; the basement story to be built of stone, two feet above the surface of the ground on the west side and the west half of the center. The north and south walls 2 feet above the surface of the ground; the east half of the basement story to a level with its basement story, to a level with it the balance of the walls, to be constructed of well burnt brick. The first story of the house above the basement to be fourteen feet and two inches high, to be divided off into rooms, halls, stairway passages, and apartments as laid off and described in the drawing No. 2, principal story aforesaid; the second story to be nineteen feet high, and to be divided off into rooms and apartments, furnished and finished off as laid off, and described in said plan or drawing No. 3, second story; there shall be two fire-proof vaults for the preservation of the records of
199 said county, one in the county clerk's office, and one in the circuit clerk's office, each three feet by seven feet in size, finished off workmanlike manner for the depositing of the records, &c., each of said offices, steps, windows, doors, stairs, chimneys, &c., all to be made and finished off in good workmanlike manner agreeable to said plans, drawings, and sections, and specifications this day filed as aforesaid. It is further agreed by and between said parties that Mr. A. J. Henry, of Vienna, Ills., be and he is hereby appointed superintendent of the work for and on the part of the said party of the second part, the said party of the second part reserving the right and privilege at any time by order made by them to the record of the county court for and sufficient reasons to suspend or remove said superintendent, or any other by them appointed, and also in case of the death or removal of such superintendent, and appoint such other responsible and competent person as the said court may select to be superintendent of the work; and the said party
200 of the second part, in consideration of the premises, hereby covenant, and agrees to and with the said party of the first part that they will pay unto said party of the first part for building satd court-house, materials, &c., and in full of the same, the sum of thirty-eight thousand three hundred and fifty-seven dollars in manner following, to wit, nine thousand five hundred eighty-nine $\frac{25}{100}$ dollars in similar Johnson county bonds, bearing ten per cent. interest, due in six years after the date thereof, redeemable at the option of the county court at any time before due, at the time of the sealing and delivery of the contract; nine thousand five hundred and eighty-nine $\frac{25}{100}$ dollars in similar Johnson county bonds when the work is half done; nine thousand five hundred and eighty-nine $\frac{25}{100}$ dollars in money or similar Johnson county bonds at

the option of said county court when the work is three-fourths done and nine thousand five hundred eighty-nine $\frac{25}{100}$ dollars in lawful money or similar Johnson county bonds, or a part of each at the option of the said county court, when the
201 work is completed, provided that in all cases the said party of the first part, before he shall be entitled to demand or receive payment for the work, or any part thereof done under this contract (except the first payment made at the time of closing this contract), shall produce to said party of the second part, on there in office, a certificate under the hand of the superintendent of the work, showing that the materials furnished and the work done by the said party of the first part is in accordance with the plans, drawings, and specifications above referred to, and the respective provisions thereof. And it is further agreed by and between the parties aforesaid:

1st. That, together with said plans and drawings of said building, the specification as altered and amended in writing, signed by said parties, and this day filed in the county clerk's office of said county, and hereby made a part, and shall be considered and construed a part of this contract.

2nd. That all work exhibited and provided to be done in the plans or drawings, and not mentioned in the specifications
202 herewith connected, or *vice versa*, shall be executed and performed in all like manner as if the same were fully mentioned and described in each thereof, respectively, without extra charge.

3rd. The superintendent of the work shall, at his discretion, *respect*, reject any work or material which he may deem to be not in accordance with the plans, drawings, and specifications herewith connected, or either of them, are unfit or unsuitable work to be done under this contract as herein provided, and he shall have the power to cause any unsound work, or work not done in accordance with said plans, drawings, and specifications, or either of them, or with the provisions hereof, or with the directions to be by him from time to time given in relation to the execution hereof, to be altered at the expense of the said party of the first part.

4th. That in case the party of the first part shall refuse or neglect to sup-ly a sufficiency of materials or workmen, the said party of the second part shall have the right to provide the necessary ma-
203 terials and workmen, after three days' notice in writing given to said party of the first part, and in such case the expense of all materials, and the least of the work so provided by the said party of the second part, shall be deducted from the amount herein agreed to between the said party of the first part.

5th. That in order to prevent all disputes or disagreements between the parties aforesaid in relation to the performance hereof on the part of said party of the first part, it is hereby expressly agreed and understood that the said party of the first part in the performance hereof shall strictly adhere to the plans, drawings, and specifications herewith connected as aforesaid, and in case any difference of opinion shall arise between the parties aforesaid as to the quality

or quantity of the work, or material or any other matter connected with the work or the performance of the covenants and agreements herein contained on the part of the said party of the first part, the decision of the superintendent of the work shall be final and binding on all parties.

204 6th. That the said party of the second part shall not in any manner be answerable or accountable for any loss or damage that shall or may happen to the said work, or any part or portion thereof, or any of the materials or other things used or employed in furnishing and completing the same providential accident only excepted.

7th. That should the said parties of the *said parties of the* second part neglect or fail to make the payment to be made by this contract to the said party of the first part, when the same shall become due and payable, according to the due progress of the work by the terms of the contract, then and in that case the said party of the first [part] may at his option suspend work on the house, and the said party of the second part shall be liable for all damages said party of the first part may sustain in consequence of such neglect or failure.

In witness whereof, said parties have hereunto set their hands and seals at Vienna, this 5th day of August, A. D. 1868.

JOS. K. FRICK. [L. S.]
J. B. SMITH, [L. S.]
Co. Judge.
JAMES J. HOGG. [L. S.]

Signed, sealed, and delivered in the presence of—
B. S. SMITH.

205 STATE OF ILLINOIS, } ss:
Johnson County, }

I, W. W. Boyt, clerk of the county court of Johnson county, State of Illinois, do hereby certify that the above and foregoing contract appears of record on pages 365, 366, 367, and 368 in the County Court Record "B," in my office, and that the foregoing is a true, perfect, and complete copy of said contract as it therein appears.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at Vienna, in said county, this 20th day of July, 1875.

[L. S.]

W. W. BOYT,
County Clerk.

3. *Bond of J. K. Frick.*

Know all men by these presents that we, Joseph K. Frick, of the city of Cairo, and A. J. Kuykendall, of the county of Johnson and State of Illinois, parties of the first part, are held and firmly bound unto Jason B. Smith, county judge, and James J. Hogg and Mark Whitaker, associate justices, and together forming the county
206 court within and for the county of Johnson and State of Illinois, party of the second part, in the penal sum of twenty thousand dollars, for which payment, well and truly to be made to

the said party of the second part and their successors in office, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals and dated the fifth day of August, A. D. 1868. Whereas the above-bounden Joseph K. Frick has entered into a contract this day with the said party of the second part to build, in the town of Vienna, in Johnson county, on the center of the public square, a court-house for the use of the said county of Johnson, said court-house to be built and completed according to the terms of said contract, the specifications of which are this day filed in the office of the clerk of the county court of said county of Johnson, and by which contract and specifications the said above-bounden Joseph K. Frick is to fully finish and complete said court-house on or before the first Monday in Sep-
207 tember, 1870, and said parties of the second part agree to pay the said Joseph K. Frick the contract price or sum for the building of said court-house the sum of thirty-eight thousand three hundred and fifty-seven dollars, one-fourth of said contract price payable in advance, one-fourth when the work is half completed, one-fourth when the work is three-fourths completed, and the remainder when said house be fully completed:

Now, the condition of the above obligation is such that if the said Joseph K. Frick shall, as soon as may be and within a reasonable time, commence*d* the building and construction of said court-house, and shall with all diligence and reasonable expedition proceed with the work according to the terms and conditions of said contract, and shall in due time, according to the spirit, intention, and terms of the said court-house contract, *shall* hasten and build and finish the same within the time limited for the completion thereof by said contract in a good, substantial, and workmanlike manner, agreeable to said contract and the plans and drawings and specifications this
208 day filed in the office of the clerk of the county court of Johnson county, then the above obligation to be null and void; otherwise of full force and virtue.

JOSEPH K. FRICK.
A. J. KUYKENDALL.

Signed, sealed, and delivered in the presence of—
L. W. FERN.

STATE OF ILLINOIS, }
Johnson County, } *ss:*

I, W. W. Boyt, clerk of the county court in and for the county of Johnson, State of Illinois, do hereby certify that the foregoing is a true, perfect, and complete copy of the said bond of Joseph K. Frick and A. J. Kuydendall as it appears of record in my office in County Court Record "R" of said county, on pages 368 & 369.

In testimony whereof, I have hereunto set my hand and official seal, this 20th day of July, A. D. 1875.

[L. S.]

W. W. BOYT,
County Clerk.

4. *Specifications for Building.*

209 Specifications for the materials and work necessary in building a court-house at Vienna, Johnson county, Illinois, according to the accompanying plans, elevations, sections, and detail drawings as furnished by Mariam & C., form of and basement and principal story, 2d story, and longitudinal sections and cross-sections and end elevation and front elevation.

The drawing and such writing, interlineations, figures and details, as may be upon them, are to be considered a part of and illustrating these specifications in the plans; dark blue designates stone; red, brick; brown, yellow wood, which is to be the standing guide for the different contractors to execute from. Contractors are requested and expected to carefully examine the contents of the specifications, the principal portion as well as the written, as every word of the printed is to remain in full force unless it is erased.

Duties of Contractors.

He shall be held strictly to *to* execute such work and to use such materials as hereinafter described, and in all cases when the
210 drawings are figured, the figures must be taken by him as the given dimensions, without reference to what they may measure according to the scale; he will further submit as to the character of the materials used and the work done to the judgment of the superintendent, and to procure from him all necessary interpretation of the design and plans and all necessary certificates regarding his payments on the contract; also for all additions or deductions which may result from changes of designs and plans. All payments made on work during its progress on accounts of the contractor. Extra work shall in no case be construed as an acceptance of the work execution, but the contractor shall be liable to all the conditions of the contract until the work is finished and completed. The contractor must have some competent person on the work to receive instruction, and see when his particular work is required. Subcontractors will not be recognized; the contractor, his foreman or clerk, being bound in all cases to remove all improper work or materials upon being directed to do so by the superin-
211 tendent any time and all time within forty-eight hours after receiving written notice to that effect from the superintendent; buf if the contractor, after having been directed as above to remove the same, should refuse or neglect to do so, he shall not only suffer a deduction from the contract price of the difference in value of proper and improper work and materials, but shall also be liable for all damages of whatever nature or kind that result from such cause, the above provisions; to apply in the same way to all damages of whatever nature or kind that *they* may result from such cause; the above provisions to apply in the same way to all materials or work used, made, or fixed without the knowledge of the superintendent, and not approved by them; the county court, under the direction of the superintendent, shall be at liberty, if, in his judgment, the case requires, to replace the same and make good every part at

the cost of the charge of the contractor. In case of delay by the contractor in providing and delivering the requisite materials,
212 or in the advancement of the buildings or works, or a deficiency of workmen, or for misconduct, inattention, or inability, the county court shall be at liberty, after the superintendents have given to or left for the contractor, with his foreman or clerk, three days' notice in writing, to provide, at the expense of the contractor, all such materials and employ such number of workmen at such wages as the superintendent shall think proper, and the cost and charges incurred shall be retained out of the contract amount and paid by a reservation from the estimates from time to time, or amounts thereof which may be due or recoverable as liquidated damages; the county court reserves the right, by conferring with the contractor, to alter or modify the design and add to or diminish from the contract price, and the contractor, by and with the consent of the county court, to be at liberty to make any alterations in the plan for construction, detail, or execution described by the drawings and specifications without invalidating or rendering void the contract, and in case of any difference in expense and addition
213 to or abatement from the contract amount shall be made in the ratio or proportion such work may bear to the whole contract work agreed to be performed, and the same to be returned as before mentioned, the county court being bound in all cases to recognize the acts of the superintendent not only as *records* extra work, but also as to the sufficiency of the designs, materials, and workmanship. No alteration or extra work to be done except upon the price being agreed upon beforehand and endorsed upon the contract, and in case no agreement could be effected between the county court and contractor in regard to the price for alteration or modification as above referred to, the decision of the superintendent is to be binding and conclusive. A. J. Henry declared to be superintendent of the work for the county court. His duties will consist in giving on demand such interpretations, either in language, writing, or drawing, as in his judgment the nature of the work may require, having particular that any and all work done and materials used for the
214 work be such as is hereafter described, in giving on demand any certificates that the contractor may be entitled to, and in settling all deductions of or additions to the contract price which may grow out of alterations of the designs or change of plans after the same is under contract; also determining the amount of damage which may accrue from any cause, and particularly to decide on the fitness of all materials used and work done. It is not incumbent upon the superintendent to notify the contractor to attend to and have in readiness his own work and the requisite materials at such times as the progress of the building may require them, if the contractor does attend to his part of the work and have his portion of the materials and work in readiness, as it may be wanted to work into the building; he will be held accountable for all delays and damages in consequence of any such neglect. All the designs, plans, details, elevations, and sections of each and every kind that the contractor may have received must be preserved and returned to

the superintendent before the final certificate is given, and the
215 county court, their legally authorized agent or agent- must,
be notified by the contractor that he is ready to have a settlement, so that if the county court or parties interested have any bills to file in or statements to make, he or they can do so before the superintendent make his final certificate to adjust between the parties, the superintendent's opinion, certificate, report, and decision to be binding and conclusive dimentions of the building as represented by and figured on the drawings.

Hights.

Basement, 2 feet above the ground on the west side of building, and other side level with it.
Principal " " 14 " " 2.
Second " " 19.

The building is to be erected in a thorough and workmanlike manner, and must be finished throughout as hereinafter described; and anything shown by the drawings, and not particularly reserved or described, which is necessary to complete the entire work of the
building, is to be done at the cost of the contractor, notwith-
216 standing such omit-ion.

Masons' Work—Excavation.

For and after using so much of the earth as shall be needed in filling up around the walls, drains, &c., the balance or surplus, if there should, shall be used in filling up around the outside of the building, the yard, as the street in front, as shall be directed by the superintendent; excavate the ground for the foundation walls a sufficient depth to be below fronts, and make the foundation firm and substantial; and excavate only the east half of basement story, so that it will form a cellar eight feet deep, notwithstanding what the basement plan shows.

Double Stone-work.

The stone walls of every kind are to be of good quality of quarry stone, flat-bedded, and of nearly equal thickness, the walls to be carried to the height and of the thickness marked or shown on plans
and sections; the interior of the wall must be filled perfectly
217 solid with stone and mortor, all laid in good lime mortor,
well bedded and —— and faced on both sides; make the top and sides perfectly straight and level. The basement wall to be carried to a height level with the west side, well supplied with ventilating windows, as shown on the plans and sections, as near as possible, owing to the uneven-ess of the grounds.

Dimention Story.

Lay the foundation or footing of the walls with stone not less than figured on section, and eight inches, or as near figures, thick, except where otherwise specified or shown on plans or sections, well and evenly bedded in the earth, and laid in good lime mortar.

Cut Stone.

All the cut stone of the various kinds, such as window-sills, steps, aslaler grains, etc., is to be of good quality and of an even color, and that known as the sandstone, and must be free from slams, cracks, or imperfections of every kind, and such as is found in the
218 vicinity of Vienna, Johnson county, Illinois. All cut stone are to be properly set, and work requiring —— to be thoroughly secured with such, made of iron ¼ by ½ inches, and to be set in lead; furnish and set all cut stone of every description shown or described on the plans—platforms, buttresses, ashler grains, pilasters—with caps; the basement ashler and steps to be finebush, hammered, with ½-inch droved margin and 2½-inch level rustic; all stone above the basement and to be rubbed work quoins, 2-inch level, rustic ashler, 2-inch level rustic stone floors to rants, rubbed.

2d.

Brick-work.

All the brick used in the walls to be good, hard, well-burned bricks, and use none outside, or where exposed to damp or frost, that will not stand the weather; they must be laid erect, with flushed solid joints, leaving interstices or empty spaces in the walls for thickness of walls; see plans and sections; build brick discharging arches to take the wait of walls for the lintels over all doors, windows, and other openings in wall-
219 proof vaults; build all vaults as shown on plans and sections of same, the doors to be of wrought iron with iron frames outside; outside doors ¼-inch; build iron-cast mouldings one-fold, inside doors two-fold, No. 14 iron; vestibule lined with No. 14 iron, fire bolts to outside doors; Sarget's tack lock, worth $50.00. The brick-work must be well bedded and flushed up, tied in every fifth course, and worked in smooth and regular. Bond filled in and back close with sound brick and good mortor at the back of all ashlaring or facing of stone-work, and point up close to all sills, copings, casings, and projections; bed carefully and solidly all windows and door frames, and underpin all sills with suitable mortors; provide the needful materials of every description and cover the work from the weather at necessary times; find all the scaffolding necessary for the performance of the work, and remove the same when the work is completed; attend the other machines when re-
220 quired to back in, and fill up properly behind their work; all brick for facing the exterior walls and chimneys-tops must be of the best assorted hard, burned brick, the joints neatly struck; all the outside brick walls and chimneys-tops are to be neatly stained and tuck painted; openings for vault doors to be 3 feet wide by 7 feet 3 inches high, the basement of vaults to be built of stone, and well and sufficiently provided with openings for ventilation.

Chimneys.

Build all chimneys as indicated on the plans by the brick and closed, fill the joints with mortor, and in no case allow less than

6 inches of brick-work between timbers or any wood and the smoke-flues all to be smoothly plastered inside their entire length, and on the outside, where they pass through the floors and other wood work, chimney tops to be finished with a net curve and base, if so indicated by the plans, and the flues left entirely clear from
221 all refuse material when finished in each room adjoining.

Timbers.

—— the chimneys there must be timbers, set in a proper manner and closed with tin caps; especial pains must be [taken] that the breast or shafts in room be laid plum-, straight, and true; the caps must have a flange to fit into the inside of the timbers, so as to make them tight.

Anchors.

Furnish and set all anchors necessary to connect all the walls with the timber-work; said anchors to be made of iron, $\frac{1}{4}$ by $\frac{1}{2}$ inches; attach one to each joint, every eight feet; all ashler and other stone-work to be thoroughly anchored to the brick walls with iron anchors.

3d.

Lath and Plastering.

The inside of the entire building throughout in all the stories above the basement to be lathed in the best manner with No. 1 seasoned lath, and the same to be plastered as follows: With two
222 coats of brown mortar, and one coat of one-third of plaster of Paris and two-thirds first white lime; the court-room to have a stuc-o cornice, as shown on section, and a suitable large ornamental center; all other rooms plain ceilings; to be an suitable iron eye to be placed in the centre of the court-room ceiling, for the purpose of suspending chandalier, of $\frac{3}{4}$-inch iron; *no* mortar is to be made of fresh quick-lime, coarse, sharp sand, and for each barrel of lime a bushel of good, sound plastering hair is to be used; the lime to be well slacked and screened; the mortar is to be put on it, heavy coats to $\frac{7}{8}$-inch grounds, made straight, and in every respect finished in a thorough manner; should the hard finish show fire-cracks, stains, or blisters, or the lime in the brown mortar slack so as to break through the surface, it will be condemned as bad work. Every part of this work to be well done.

Clearing out Rub-ish.

The mason must clear out all boards, planks, horses, lad-
223 ders, mortar, dirt, and all other loose rubbish from all rooms in the several stories, and carry off such rubbish as particularly belonging to, or made by, the masons on completing of his contract, from time to time, if necessary during the progress of the work, if so directed by the architects or persons superintending.

4th.

Time.

The county court to give possession of the ground on or before the 1st day of September, 1868, the building to be entirely completed on or before the first Monday in September, 1870.

Damages.

And in order to secure the execution of the work, in the manner and at the time specified, it is hereby distinctly declared that the damages arising from the non-fu–llment of the contract, as regards time, shall be ten dollars each and every day the work remains unfinished, and which sum of damages shall be deducted from the contract price.

(1)

224 Carpenters' Work.

All timbers, girders, timbers, joists, truss-beams, partition-studs, roofs, piazzas, balconies, etc., etc., must be prepared, framed, and constructed according to the drawings and sections. The particular kind of materials and their dimentions must be as ascribed and figured on plans and specifications. All the floor-joists must be properly sized to widths and jointed, covering on the top edge. All framing and other rough timber must be of good, sound, merchantable poplar or oak lumber.

Joist.

Basement-story joists and placed 16 inches from center.
Principal, 2x14 " " " " " "
Second, 2x14 " " 16 " " "
Artic, 2x6 " " 16 " " "

Rafters, as shown and figured on sections, placed 2 feet from center; wall-plates, as shown and figured on sections. For size of timbers and construction of roof, see sections. The ceiling of the court-room to be paneled, as shown on sections.

Bridging.

All joist having from 9 to 12 feet between bearings must
225 have one row of cross-bridging, made of good stuff, 2½ by 1¼ inches, well fitted at the angles. All having from 12 to 18 feet must have two rows, as above; all having from 18 to 25 feet must have three rows, as above, and in all cases put in as soon as soon as the joists are leveled and thoroughly spiked with two tenpenny nails at each end.

Headers and Trimmers.

All headers and trimmers must be put in double thick, thoroughly framed and spiked together, leaving all openings of sufficient size for all finish of stairs and chimney skylights and scuttles, and in no case allow the timbers to come with two inches of the brick of any smoke flue.

Wooden Lintles.

All openings of any kind in brick or stone to have wooden lintles behind the stone or iron caps or anchor, in no case less than six inches thick by the required width; and in all cases where not a backing for an arch or leap, must be wide enough to cover the thickness of the wall.

Partition Studs.

226 All —— and window studs must be set double and trussed overhead of all openings in all substantial manner; partition to be sized and joined where required to make a true surface to a straight edge; all angles of rooms must be made solid, and in no case allow studding to be set so to allow lath to pass through the angles; all round corners to be furred for lathing horizontal in every case; all 9 to 12 feet stories to be bridged once, all over that twice; all stud-ing must be 2x6 unless otherwise shown, and all placed 16 inches from centre.

Furring.

Bearing strips and bond timbers. Leading strips 2x4 on all walls for the end of joints to rest upon; all proper bond land timbers and wooden bricks of every description necessary for the proper execution of the work to be furnish-.

Anchors and Stirrups.

Diagonal anchors of 2x4 scantling floors in all cases where the joist lie parallel with the walls to be anchored; these anchors
227 must not be less than eight feet in length in flush with the top of joist, and must be placed one on each pier, or wall iron stirrups for hoistways and stairways.

Proof.

The carpenter shall frame and construct, according to the drawings, sections, and specifications, in the most thorough manner, and fix strongly all requisite straps, stirrups, and other irons. Cover the roof with good sound seasonable poplar joist; the joist made close and well nailed. Cover the roof with best roofing tin, well soldered in all the joints and warranted tight; to be iron straps and stirrups, as shown on section of roof of ¾ by 3-inch iron, with ¾-inch bolts. Make perfectly water-tight around all chimneys, skylights, ventilators, observatories, hips, valleys, cuttlers, fire walls, or wherever the roof of one part joins the perpendicular walls of others. In all cases use 4 pounds of sheet lead 24 inches behind the chimneys, and wherever lead is the most applicable it must be used; always
228 put in when the brick are laid; 4 water cutters, made on the roof, of best tin, placed in the cornices, as per plan, to be conducted from thence to the ground in two six inches tin pipes, which must be well secured to the building with hooks.

Contractors to furnish the contracting mason in all cases where the roof is of felt or of composition, and when the same is required,

as sufficient amount of round seasoned 2 by—scantling, free of sap, to build in; the walls surrounding the roof to be covered, in order that the felt of the roof may be properly secured at the edges.

Cornice.

Exterior cornice to extend around the entire building and to be of wood, the same constructed as per detail drawings, sections, and elevations. Cuppold. Build all balconies, porches, piazzas, verandas, observatories, steps, per drawings, etc. Build and construct a cuppold in all respects as shown on elevations, plans, sections.

Windows.

All windows for the several stories in the building must be
229 of the forms, styles, and dimensions as marked on plans, elevations, sections, and details, or as hereinafter described. All sash must be $1\frac{3}{8}$ inches thick, and those having circular light in centre of head, (except mullion windows,) to have an iron plate crossing the joint of the sash to strengthen the same. All to be double hung with weights, cords, and $2\frac{1}{4}$-inch turned axle pulleys in the usual manner; to have cast-iron caps to all openings instead of stoneware called by the plan.

Blinds and Shutters.

All inside shutters to be $1\frac{1}{4}$ inches thick, and of best seasoned *with* pine, fitted with best inside fastenings to all the windows in the several stories. Furnish and hang suitable fourfold inside shutters to all windows as above.

5th.

All floors in the several stories to be $1\frac{1}{4}$-inch oak plank, 4 inches narrow; well-worked flooring, except when otherwise specified; thoroughly seasoned and laid in the best manner; well nailed through the face; all uneven and rough spots made smooth;
230 all floors to be defended with at least $2\frac{1}{2}$ inches of mortar, as per sections, with at least 2-inch space between the deafening and the floors.

Grounds.

Put up ground for the finish all windows, doors, bases, casings, etc, before plastering; those on wooden partitions, $\frac{7}{8}$ by 2 inches; those on brick or stone walls, $\frac{3}{8}$ by 2 inches; and allow no cases or bases to be put up until the last coat of plastering is on and suitably dry, except when either specified.

Stairs.

Build all stairs, as per plans and sections, in the best and most substantial manner, as per detailed drawings, or as hereinafter specified. All of which be wrought from the most thoroughly seasoned materials of every kind. Treads and risers tenoned and grooved together, both front and back; balusters dovetailed, and wall strings glued to treads and landings. All treads and risers housed into wall

strings, wedged and dug, glued thoroughly; those on prin-
231 cipal stairs leading to 2d story to have 1¾-inch treads, inch risers, ash 1¾-inch strings, 12-inch octagonal newel, sunk, panneled, 7 toad-back rail, 4 inches thick; 3 octagon balusters, rail, newel, &c.; balusters of black walnut; all other steps in first and second stairs to be of ash 1¼ inches thick, all to have nosings and seated stairs leading to cupola, and basement to be of pine and 1⅛ thick.

Doors.

All doors in the building must be made of the best white pine (except where otherwise specified), thoroughly seasoned, and of the sizes marked on plans, all fitted in their respective places, hung and trimmed complete, with suitable hinges, locks, bolts, screens, etc., and all provided with good and suitable threshold ⅝ inch thick. For particular forms and thickness see articles, full size, or as hereinafter described. All outside entrance doors and those lead-
leading from hall to court-room in 2d story to be of thickness
232 of 1⅜-inch thick; all to be 4 panells each where not otherwise shown; all to be double-faced, heavy-raised mouldings; details to be given of doors.

(6.)

All doors in the building must be made of the best white pine, except where otherwise specified, thoroughly seasoned, and of the sizes marked on plans, all fettered in their respective places, hung and trimmed complete, with suitable hinges, locks, bolts, screws, etc., and all provided with good and suitable thresholds ⅝ inch thick. For particular forms and thickness see details, full size, or as hereafter described; all outside entrance doors and those leading from hall to court-room in 2d story to be of two thickness of 1⅜-inch lumber; all others to be 1¼ inches thick; all to be four panels each where not otherwise shown; all to be double-faced, heavy raised mouldings; details to be given of doors.

Finish.

All doors and window casings, bases, etc., in the several stories to be the styles, forms, and dimensions as per detailed drawings or, as
hereinafter described; all cases, bases, etc., to lap one inch over
233 ground and fit perfectly to the plastering; the whole to be done in the most substantial and workmanlike manner, with thoroughly seasoned white pine, No. 1 clear; details to be furnished for all door and window finish, and to be of 3-4, &c., fire member finish, base moulded. The court-room to be wainscoted around as high as the bottom of the windows, with coping connecting with the window-sills, the railing around the bar and judges' stand to have 8 inches octagon newels, 5½-inch toad-back rail, and 3-inch octagon balusters, all black walnut; 5½-inch toad-back rail and 3-inch octagon balusters, all of black walnut; the plat, steps, clerk's and sheriff's desks and seats constructed as shown on plans and sections, seats to have screwed arms and moulded caps, caps and arms black walnut,

the backs of the seats and wainscoating to be of clear narrow bedden ceiling.

Trimming.

All locks, bolts, knobs, latches, trimmings, and fastenings of every description to be of the best kinds and qualities for their re-
234 spective places, and must be properly fixed to all doors, sashes, blinds, shutters, etc., in a workmanlike manner. All sash that are hung with weights to be secured with sash-locks; all that are not hung will have sash-springs; all inside folding shutters will have shutter bars and knobs to each separate set of flaps, all of which will be silver-plated in the rooms where plated door trimmings are; and all others to correspond with the trimmings specified for other portions of the finish; all doors hung with three 5 x 6 inch loose joint butts each, and the outside and main court-room doors trimmed with Davenport, &c., Mallery's 3-tumbler front doors, mortice locks; all other doors to have Davenport, &c., Malery's No. 86 five-inch mortise locks, &c., latches, brass face plates, bolts, and keys, 4 keys to each lock, all to have hinges, knobs, and escutcheons. All windows to have good heavy brass sash-locks, with bronzed knobs; all shutter-knobs to be bronzed. The carpenter must clear out all lumber, lumber benches, blocks, chips, shavings, dirt,
235 and all other loose rubbish from all rooms in the several stories, sweep all floors clean, and carry off all rubbish as particular belonged to or made by the carpenter or joined on completion of his contract.

Painters' Work—Outside.

Paint all wood, tin, and iron work with three coats best quality white lead and boiled linseed oil, and tint the same as may be directed by superintendent of county court. All work to [be] thoroughly cleaned before each [coat] of paint is put on, and all nail-holes and other imperfections well filled with putty before the second coat of paint is put on. Paint all outside window and door blinds with 3 coats best lead and oil and 2 coats best Paris green.

Inside.

Paint all inside wood work (floors excepted) with 3 coats best white lead and boiled linseed oil, the last coat to be colored for graining, mixed with turpentine; all work to be thoroughly cleaned and well sand-papered down before each coat of paint
236 is put on, and all nail-holes and other imperfections to be well filled with putty made of white lead before the second coat is put on. Paint the entire building throughout, including the basement, as above.

Graining.

Grain all wood work in the entire inside of the building, except the basement, to be of grained oak, the doors dark, the other work light; the outside of all outside door-frames grained dark oak in the best manner, and varnish the same two coats best coach varnish.

Glazing.

American best city brown glass, well bedded, fastened and puttied, and to be thoroughly cleaned with dry whitening, and to be free from all waves, blisters, etc.

Changes made in the following specifications, and the amount of deduction for each on the contract price.

1st. Steeple on cupola made like the steeple on cupola on Cairo court-house. Contract price reduced for change	$660 00
2d. Changes the stonework of the above basement story to be rusticated brickwork. Contract price reduced for change	1,634 00
237 3d change. Make hall floors level with entrance of doors. Contract price reduced for change	13 00
4th. Leave out staining and tuck painting outside brick walls and chimney tops. Contract price reduced for change	136 00
Total amount of reductions	$1,243 00
Amount bill by Jos. K. Frick	408 00
Am't of reduction agreed upon at time of closing contracts	2,443
Contract price	38,357

The above specifications, signed by us, the parties, this 5th day of August, 1868.

JOS. K. FRICK, *Contractor.*
J. B. SMITH,
Judge of Co. Court, J. C., Ills.
JAMES J. HOGG, *Associate.*

Ordered by the court, that court adjourn till court in course.

J. B. SMITH, *Judge.*

The following changes are agreed to, without adding to or diminishing from the contract price, to wit:

238 First. The stone in the basement above the foundation is to be hammer-dressed masonry, laid in regular courses; the window caps in the basement story may be one whole stone or three arch stones as the contractor may elect; there will be no protection pits for windows or doors.

Second. All steps for four entrances to be cut draft on the corners, balance of the surface to be crannie work; the wainscots for the same to be cut and dressed in same manner as the steps for the main entrance.

Third. The stone work of all corners and front elevations, including the belt around the building, to be painted brick-work, imitation of stone.

Fourth. The eight double windows shown on the east and west elevations are to be constructed single windows instead.

Fifth. The ceiling in the court-room to be level surface, with

stucco cornice in the corners, and a suitably large ornamental centre, with an iron eye for *for* suspension of chandelier.

Sixth. The general plan of the cornice to be executed according to the plans and draft, except the panel work and moulding, which may be simplified in some of their details.

239

Seventh. The size of the vaults to be increased from three feet by seven feet to seven feet by eleven feet.

Eighth. Width of hall running north and south increased from seven feet and eight inches to ten feet.

This agreement made in open court, on the ninth day of September, eighteen hundred and sixty-nine.

JASON B. SMITH, *Judge.*
JAMES J. HOGG,
Associate J.
JOS. K. FRICK,
By A. J. KUYKENDALL,
His Att'y.

STATE OF ILLINOIS, }
Johnson County, } *ss:*

I, W. W. Boyt, clerk of the county court of Johnson county, State of Illinois, do hereby certify that the above and foregoing is a true, perfect, and complete copy of the above-described specifications, plans, and changes, as they appear of record in my office, on pages 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, and 381 in county court record "B" of said county.

240

In testimony whereof, I have hereunto set my hand and the official seal of said court, at Vienna, in said county, this 20th day of July, A. D. 1875.

[L. S.]

W. W. BOYT,
County Clerk.

"E."

5. Assignment of Contract to Ham & Pierce.

Know all men by these presents, that I, Joseph K. Frick, by A. J. Kuykendall, my attorney, in consideration of the sum of one dollar to me paid in hand by Charles I. Ham and Isaac N. Pearce, under the firm-name of Ham and Pearce, do hereby assign to the said Ham and Pearce, and their assigns, all my interest in the above-written contract between Joseph K. Frick, the party of the first part, and the county court of Johnson county, Illinois, party of the second part, and every clause, article, right, or privilege therein contained; and the said party of the first part further agrees and covenants to pay over to the said Ham and Pearce the sum of nine thousand five hundred (9,500) dollars, in lawful money or Johnson county bonds, bearing date December first, eighteen hundred and sixty-eight.

241

JOSEPH K. FRICK,
By A. J. KUYKENDALL,
His Attorney.

STATE OF ILLINOIS, } ss:
Johnson County, }

I, W. W. Boyt, clerk of the county court of Johnson county, State of Illinois, do hereby certify that the foregoing assignment, marked "E," appears of record in my office, and that the foregoing is a true, perfect, and complete copy of said assignment, as it appears on page 381 in county court Record "B" of said county.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at Vienna, in said county, this 20th day of July, A. D. 1875.

[L. S.] W. W. BOYT,
County Clerk.

(Endorsed:) Filed July 22, 1875. J. A. Jones, clerk.

242 Then afterwards, to wit, on Monday, the 3d day of January, at the January term of said court, in the year of our Lord one thousand eight hundred and seventy-six, the following further proceedings were had in said court in said cause, and entered of record, to wit:

Decree of Jan'y 3d, 1876.

CHARLES I. HAM
vs. } 3852. In Chancery.
ISAAC N. PIERCE & ANDREW J. KUYKENDALL.

This day come the parties, by their counsel, and submit this cause to the court on the pleadings and proofs, and the court having heard the same, and being sufficiently advised in the premises, doth order and decree that the defendants pay to the complainant the sum of five thousand and one dollars ($5,001.00), and that the complainant have execution for the recovery thereof, as upon a judgment at law. And the court doth further order and decree that the
243 complainant pay one-half of the costs of this proceeding, and that the defendants pay the remaining half thereof.

Whereupon defendants enter their motion for a rehearing of this cause.

And thereupon on the same day, in the year last aforesaid, came the defendants, by their solicitors, and filed in said clerk's office their motion for a rehearing of said cause; which said motion is in the words and figures following, to wit:

Motion for Rehearing.

United States Circuit Court, Southern District of Illinois. January Term, A. D. 1876.

CHARLES I. HAM
vs. } Bill in Chancery and Decree for Complainant.
ISAAC N. PEARCE & ANDREW J. KUYKENDALL.

And now on this, the first day of said term, come the defendants, by their solicitors, and enter this their motion for a rehear-
244 ing of the above cause: First, upon the ground of newly-

discovered evidence. Second, that the decree in this cause is not sustained by the evidence, &c.

W. J. ALLEN &
ANDREW D. DUFF,
Solicitors for Def'ts.

(Endorsed:) Filed January 3, 1876. J. A. Jones, clerk.

And afterwards, to wit, on Monday, the first day of January, at the January term of said court, in the year of our Lord one thousand eight hundred and seventy-seven, the following further proceedings were had in said court in said cause and entered of record, to wit:

Order for a Rehearing.

CHARLES I. HAM
vs.
ISAAC N. PIERCE *et al.* } 3852. In Chancery.

245 On the 1st day of July, 1876, came the parties, by their counsel, and submitted to the court the application of the defendants for a rehearing in this cause; and the court having heard the same, and being now, on the 1st day of January, 1877, fully advised in the premises, doth order and decree that a rehearing be had in this cause. And the court doth order and decree that the defendants have sixty days from this date in which to take additional testimony, on proper notice to complainant; and that complainant have sixty days after defendants' testimony is so taken in which to take additional testimony on his part, on proper notice to the defendants.

And afterwards, to wit, on the 20th day of July, in the year of our Lord one thousand eight hundred and seventy-seven, came the complainant, Charles I. Ham, and filed in said clerk's office his affidavit in said cause; which said affidavit is in the words and figures following, to wit:

246 *Affidavit of Charles I. Ham.*

UNITED STATES OF AMERICA, *Southern District of Illinois.*

In the Circuit Court, June Term, A. D. 1876.

CHARLES I. HAM
vs.
ISAAC N. PEARCE & ANDREW J. KUYKENDALL } In Chancery.

Motion for Rehearing.

Charles I. Ham, the above-named complainant, being sworn, on oath states that he has no recollection of any conversation had by him with either Jonathan C. Willis, William M. Murphy, or William

R. Hodge, witnesses whose affidavits are herewith filed for the purposes of this motion, in which he stated that he had abandoned the contract for building the Johnson county court-house, and turned over the contract to Isaac N. Pearce, or used any words to that effect.

Affiant further states that he is positive he has never had any conversation whatever with either of said witnesses relative to said court-house contract since he and the said Pearce sublet it to
247 Niles L. Wickwire, on the 8th of December, 1869, and that if he ever had any conversation with either of said witnesses concerning said matter, it was prior to his going to work with men, and in the fall of 1869, on the foundation of the building.

CHAS. I. HAM.

Subscribed & sworn to before me, this 20th July, 1876.

J. A. JONES, *Clerk.*

(Endorsed:) Filed July 20, 1877. J. A. Jones, clerk.

And afterwards, to wit, on Friday, the 12th day of July, at the June term of said court, in the year of our Lord one thousand eight hundred and seventy-eight, the following further proceedings were had in said court and entered of record in said cause, to wit:

Order on Hearing Motion to Suppress Depositions.

CHARLES I. HAM
vs.
ISAAC N. PIERCE *et al.* } 3852. In Chancery.

248 This day this cause came on to be heard, upon motion of complainant to suppress the depositions of W. W. Gould and others, taken before F. M. Jones, Esq., county clerk of Johnson county, on the 28 of January, 1878, and the court having heard argument of counsel thereon, takes the same under advisement.

And afterwards, to wit, on Monday, the 16th day of June, at the June term of said court, in the year of our Lord one thousand eight hundred and seventy-nine, the following further proceedings were had in said court in said cause and entered of record, to wit:

Order for Hearing Cause.

CHARLES I. HAM
vs.
ISAAC N. PIERCE *et al.* } 3852. In Chancery.

By consent of parties, by their solicitors, this cause is set for hearing on the 25th day of June inst.

249 And afterwards, to wit, on the 25th day of June, in the year last aforesaid, came the parties, by their solicitors, and filed in said clerk's office their agreement in said cause; which said agreement is in the words and figures following, to wit:

Agreement to Submit Cause.

In the Circuit Court of the United States, Southern District of Illinois.

CHARLES I. HAM
vs.
ISAAC N. PIERCE and ANDREW J. KUYKENDALL. } In Chancery. No. 24.

This cause is, by agreement, submitted on bill, exhibits, answers, replication, and proofs on file. The complainant's solicitor is to file written or printed argument and brief in ten days from this date; the defendants' attorney to file written or printed argument and brief in twenty days thereafter, and the complainant's solicitor to file written or printed reply in twenty days thereafter. Dated June 25th, 1879.

SAMUEL P. WHEELER,
Sol'r for Compl't.

250 JOHN M. PALMER,
Sol. for Def't

(Endorsed:) Filed June 25, A. D. 1879. J. A. Jones, clerk.

251 (*Complainant's Testimony.*)

STATE OF ILLINOIS, *Clay County:*

The deposition of Cullen M. Stanton, of Springfield, State of Illinois, a witness of lawful age, produced, sworn, and examined upon his corporal oath, on the 27th day of April, 1877, by me, a notary public for and within the said county and State, at the office of the Mayor House in Flory, in said county, in compliance with the notice hereto attached, at the hour specified in said notice, to be used in a certain suit and controversy now pending and undeterm-ed in the circuit court of the United States for the southern district Illinois, entitled Charles I. Ham *vs.* Isaac M. Pearce and Andrew J. Kuykendall, on behalf of the complainant.

The said CULLEN M. STANTON being first duly sworn by me, as a witness in the said cause, previous to the commencement of his examination, to testify the truth in relation to the matter in controversy, so far as he should be interrogated, testified and deposed as follows:

Testimony of Cullen M. Stanton.

Interrogatory 1. What is your name, age, place of residence, and occupation?

252 Answer 1. Cullen M. Santon; Springfield, Ill.; age, thirty-six; occupation, division superintendent Ohio & Miss. R'y Co.

Int. 2. Where were you, and in whose employ, in the summer and fall of eighteen hundred and sixty-nine?

Ans. At Vienna, Johnson Co., Ill., in the employ of Chas. I. Ham, as clerk.

Int. 3. State whether you was present on the ninth of September, 1869, when the changes in the plans and specifications for the building of a court-house in Johnson county Illinois, then under contract between the county court of said county and one J. K. Frick were agreed to, and the assignment of said contract was made, A. J. Kuykendall as the attorney of Frick, to Ham and Pearce?

Ans. 3. Yes, sir; I was.

Int. 4. If you know, you may state the circumstances under which those changes were agreed to, and said assignment was made.

253 Ans. 4. I wrote the changes in specifications and the assignment on the records at the request of the county clerk, and both were written in open court.

[L. S.] C. M. STANTON.

I, Thomas Blanchard, a notary public of the county of Clay, State of Illinois, do hereby certify that previous to the commencement of the examination of the said Cullen M. Stanton as a witness in the suit between the said Charles I. Ham, complainant, and the said Isaac M. Pearce and Andrew J. Kuykendall, defendants, he was duly sworn by me to testify the truth in relation to the matters in controversy between the said Charles I. Ham, complainant, and the said Isaac N. Pearce and Andrew J. Kuykendall, defendants, so far as he should be interrogated concerning the same; that the said deposition was taken at the office of the Mayor House, in Flora, in said county of Clay, State of Illinois, commencing at the hour of nine o'clock a. m., on the 27th day of April, 1877; and that after said deposition was taken by me, as aforesaid, the interrogatories and answers were read over by me to the witness, and that thereupon the same was signed and sworn to by the said Cullen

254 M. Stanton, the oath being administered by me at the place and on the day and year last aforesaid.

My commission as notary public, as aforesaid, will expire on the 24th day of July, 1879.

Witness my hand and notarial seal, this 27th day of April, 1877.

[L. S.] THOMAS BLANCHARD,
Notary Public.

(Indorsed:) Filed May 28th, 1877. J. A. Jones, clerk.

255 *Testimony of W. W. Boyt.*

(Caption waived by both parties.)

(Both parties agree that depositions may be taken in narrative form.)

Depositions taken before John S. Crum, master in chancery, of Johnson county, State of Illinois, on the 18th day of April, A. D. 1877, in the case of—

CHARLES I. HAM
vs.
ISAAC N. PEARCE & ANDREW J. KUYKENDALL. } In Chancery on behalf of the complainant.

The defendants appear by counsel and enter the following protest, to wit:

The defendants object to the taking of any further testimony in this cause, on the ground that the time limited by the court for that purpose has long since expired.

The deposition of W. W. BOYT, a witness produced, sworn, and examined on the part of the complainant, upon being duly sworn, deposed as follows:

My name is W. W. Boyt; my age is 36 years; my residence is in Vienna, Johnson county, State of Illinois; my occupation is
256 clerk of the county court of Johnson county, Illinois.

The changes in the plans and specifications made on the 9th day of September, 1869, in the court-house contract between Frick and the county court of Johnson county, Illinois, appear on county court record "B," in pages 380 and 381, immediately after the contract and specifications.

The assignment of the contracts by Kuykendall, as Frick's attorneys, to Ham and Pearce, appears on page 381 of the same book immediately after the changes; there is nothing of record to show whether that assignment was placed on record in vacation or in term time.

On the 6th day of September, 1869, Hon. Jason B. Smith, judge; James J. Hogg and Mark Whitaker, associates, composed the county court of Johnson county, as appears of record.

The record shows that James B. Smith was county judge of Johnson county, on the 9th day of September, A. D. 1869.

John Oliver took the oath as county judge of Johnson county, on the 6th day of November, A. D. 1869. The new court held
257 its first session on the 6th day of December, 1869, composed of John Oliver, judge; J. M. Parrish and D. W. Emerson, associates.

W. W. BOYT.

(Objected to by def'ts.)

Subscribed and sworn to before me, this 18th day of April, 1877.

JOHN S. CRUM,
Master in Chancery of Johnson Co., Ills.

Testimony of James B. Chapman.

The deposition of JAMES B. CHAPMAN:

My age is 44 years; my place of residence is Vienna, Johnson county, State of Illinois. I resided in Vienna, Ills., from the first of September, 1869, until in February, 1871. I have resided here always as my permanent home. I have always regarded this as my home. I was in business here during the work on the court-house, in 1869 and 1870. I am acquainted with the complainant, Charles

I. Ham, and was at the time; Mr. Ham was boarding with me at the time mentioned. He boarded with me all the time he was here. Mr. Ham took the contract with Pearce. He made some excavations and partially built the foundation; that was in 1869; it seems to me it was in the spring, April or May, they commenced.

258 Mr. Ham and his teams and men have [been] at work on it. Work was suspended on the railroad in 1869. I was mistaken about the time work was begun on the court-house.

He took the contract in September and commenced work in October. Mr. Wickwire built the court-house. He commenced in the spring or summer of 1870.

I was frequently about the building while Mr. Wickwire had it under construction. Mr. Wickwire had the management of the work of constructing the house.

I suppose I was acquainted with the market value of Johnson county bonds at that time. I heard sales of them at 90 cts.; that was considered the marketable value of the bonds.

Int. What would you say would be a reasonable compensation for defendant Kuykendall's responsibility, his trouble, expense, and time in negtiating the court-house bonds and in doing what else may have been necessary in connection with it?

Ans. I should think he ought to have $400.00 or $500.00. I do not know whether the assignment of the contract to Ham and

259 Pearce was made in open court or not.

Interrogatory. If you have heard Kuykendall say how much he has made out of the court-house matter net, you may state it.

Answer. I never heard him state; I recollect of Pearce going up into Indiana to see Ham, in the spring of 1870, after the wall of the court-house was pretty well up.

He stated to me what he was going up there for; I had asked him. He said he was going up to see Charley Ham. He and I had business with Ham. He said he was going up there to buy Charley's interest in the court-house. When he returned, I asked him what success he had; he replied not very good; he did not accomplish anything. Mr. Pearce and I were both creditors of Mr. Ham; that is one reason why I asked him. While the court-house was going on I had frequent talks with Mr. Pearce about Mr. Ham and his connection with the court-house; he always told me Mr. Ham was a partner with him in the matter of the court-house.

260 Mr. Pearce and I both being creditors of Mr. Ham, we frequently had conversations about his ability to pay, and expressed to each other our opinions about his integrity, &c. I remarked on one occasion in Cairo—Mr. Pearce and I had went there to see Ham; after a conversation with him we left the room down at the St. Charles Hotel. Esquire made the remark that Charley Ham was an honest man, and we would be sure to get our pay, and I intend to see to it that he gets his interest in our court-house contract.

At another time Pearce and I received a notice to appear at the office of Dodge, Lord & Co., in Cincinnati. At Indianapolis Mr.

Ham joined us; we went on together to Cincinnati; we had a conversation with Mr. Ham at a hotel in Cincinnati. Mr. Pearce was highly pleased at the prospect of getting his money, and he complimented Ham again very highly, and seemed to be very enthusiastic about the matter, and made about the same remark, in substance that Ham was a very honest man, and he intended to have justice done him in the court-house matter. He spoke about it often, saying he intended to see that Ham should have
261 his interest or share in the profits of the court-house contract.

I heard him say it after the house was completed.

I had conversations with Pearce after Ham had paid off his railroad debts. It was in 1872, I think, that Ham settled up his railroad debts. I think he settled with me in the spring of 1872; we were all together making some settlement about some houses that Ham had left with us. After he paid us off, Mr. Pearce seemed to be in an extra fine humor, and says, Now, I want Charley to have his share of the profits in the building of the court-house. He frequently spoke to me about that matter at different times. Mr. Pearce would now be regarded among business men as insolvent.

Defendants object to all this testimony.

Cross-examination:

I don't —— defendant, Kuykendall, was present at any of the conversations I have detailed as having had with Pearce. Mr. Pearce went to Indiana to see Ham about the court-house matter in April or May, 1870. I would not be positive. I don't recollect when the brick were burned to build the court-house.

262 Interrogatory 1. Do you not know that the brick were burned after Wickwire commenced work on the court-house?

Answer. I think they were.

Int. 2. Then you are mistaken about the walls of the court-house being nearly up when Pearce went to Indiana?

Complainants object to this interrogatory.

Ans. I am of the opinion that the walls were progressing. I don't remember how far.

Int. 3. You state in your examination in chief that the service and responsibility of the defendant, Kuykendall, in the matter of the court-house [was] worth $400.00 or $500.00. Do you take into consideration the injunction suit was pending for a year, in which Kuykendall defended Frick on a change of venue, and recom-ence there, and was attended to two or three terms of court, and when Frick abandoned the contract upon which Kuykendall was on Frick's bond for twenty thousand dollars for the faithful performance of the contract, and when Kuykendall resigned the contract to Pearce and Ham he stood responsible for the completion of the house to them, and when Wickwire declined giving work on the
263 contract with Pearce and Ham, Kuykendall stood responsible to him for the negotiating and raising the money;

were all these things taken into consideration when you fixed your price?

Ans. Not altogether, for the reason that I was aware that Johnson county paid the attorney fees in the litigation mentioned, and besides, I regarded that as having little to do with a subcontract. I based my judgment on the expenses of $400.00 or $500.00 to be for Major Kuykendall's influence in negotiating the bonds and aiding on the enterprise, and for his previous trouble in forwarding the work.

Int. 4. Don't you know who Johnson county employed to defend it in the injunction suit?

Ans. The records of the county show that Judge Duff & C. N. Damun received pay for defending the injunction suit.

Int. 5. Your feelings are with the complainant in this suit, are they not?

Ans. My feelings are not biased in this suit. I simply love justice. I can say they are not with the complainant in this suit. I have written a good many communications to different papers
264 in Southern Illinois, and when events occurred I generally stated them. I do not remember writing the fact of the judgment in this case to the Cairo Bulletin. I don't remember making it to any paper but the Jonesboro' Gazette. I don't remember that I did or did not comment favorably to the complainant. I will not say that I did or that I did not.

JEROME B. CHAPMAN.

Sworn to and subscribed before me, this 18th day of April, A. D. 1877.

JOHN S. CRUM,
Master in Chancery of Johnson Co., Ills.

Testimony of Mortimer Hunsaker.

The deposition of MORTIMER HUNSAKER, a witness produced, sworn, and examined on the part of the complainant, upon being duly sworn, deposes as follows, to wit:

My name is Mortimer Hunsaker; my age is 42 years; my place of residence is in Elvira township, Johnson county, State of Illinois; my occupation is farming; I have been serving as justice of the peace in that township, I think, since the fall of 1872; I will
265 not be positive, but think I was first elected in 1872. I know one William R. Hodge, who lives in Elvira township, whom I would take to be about 50 years of age. I would suppose he lives about 5 miles from Vienna.

Interrogatory 1. Do you know what his general reputation for truth and veracity is among his neighbors?

Answer. I know what his reputation is for truth and veracity.

Int. 2. What is that reputation?

Ans. It is not very good.

Int. Is it good or bad?

Ans. So far as I have heard it is bad.

Int 3. From that reputation would you believe him on oath?
Ans. I would not.

Cross-examination:

I could not tell how many people I have heard speak of his reputation for truth and veracity; I have heard a good many; I heard Mr. Hutton say so; I heard Mr. Hand say so; I heard John
266 G. Evans say so; I heard Van Primmer say so; I heard a man by the name of Clay, who used to live out there, and who is a brother-in-law of Van Primms, say so; I do not know as I ever heard any other man say he would not believe him on oath.

(Objected to by compl't.)

Cross-interrogatory. Then you don't say that is what the people in Hodges' neighborhood generally say of his reputation for truth, do you?

Answer. I don't say that they generally say they would not believe him on oath, but I have heard numbers say they would not believe anything he says; I cannot say whether these men I have named are men who have had difficulties with Hodges or not, except Clay and Primms; I can't say that I ever did have any personal difficulties with Hodge; he made me a little mad at a lawsuit at my house one day; we talked it over in a few minutes and made it all right and he went in and ate dinner with me, and I have no more feeling against Mr. Hodge than I have against you, Mr. Daman; I have never had any difficulty with him, except that as above stated; he had a lawsuit before me once since that,
267 and before going to trial I asked him if he did not want a change of venue; he said he did not; that he was perfectly satisfied with me.

Cross-int. When you say you would not believe Hodge upon oath, you mean in a case in which he is interested, do you?

Ans. These men just said they would not believe him on oath; they did not mention as to him being interested or not.

Redirect examination:

I have no interest in the event of this suit; I do not know Mr. Ham; was not in this county when the court-house was built.

MORTIMER HUNSAKER.

Sworn to and subscribed before me, this 18th day of April, A. D. 1877.

JOHN S. CRUM,
Master in Chancery of Johnson Co., Ills.

Testimony of William J. Suit.

The deposition of WILLIAM J. SUIT, a witness produced, sworn, and examined on the part of complainant, upon being duly sworn according to law, on his oath deposed as follows:

268 My name is William J. Suit; my age is 47 years; my place of residence is in Elvira township, Johnson county, State of

Illinois; my occupation is farming; I have been postmaster for five or six years; I was county supervisor for 2 years; I was school treasurer two or three years. I know William R. Hodge, who lives in that township; I would think him to be about my age or perhaps a little older; I think he lives about six miles from Vienna; I know his general reputation for truth and veracity among his neighbors; that reputation for truth and veracity is bad; from that reputation I would not believe him on oath if he is interested.

Interrogatory 1. From that reputation would you believe that he could be procured to swear falsely for money?

(Objected to by def't.)

Answer. From his reputation I would believe he could be so procured, if I did not know anything else about him. I have no interest in the event of this suit.

Cross-examination:

269 Cross-interrogatory 1. Do you believe from what his reputation is that he would be bribed to perjure himself?

Ans. Yes, from his reputation I do; I could not tell how many persons I have heard speak of Hodge's reputation; I have heard all the people in the neighborhood, I think; I would have to name them all if I should name all whom I have heard; I have not had a particle of difficulty with Hodge as I know of.

WILLIAM J. SUIT.

Sworn to and subscribed before me, on this 18th day of April, A. D. 1877.

JOHN S. CRUM,
Master in Chancery of Johnson Co., Ills.

Testimony of Wm. S. Winchester.

The deposition of WILLIAM S. WINCHESTER, a witness produced, sworn, and examined on the part of complainant, upon being duly sworn, deposed as follows, to wit:

My name is William S. Winchester; my age is 44 years; I reside in Elvira township, in Johnson county, State of Illinois; my occupation is farming; I am a school director in the district I
270 live in; I know a man who signs his name William A. Hodges; I never heard him tell his age; I would suppose him to be 50 or 55 years old; I would suppose he lives about six miles from Vienna; he lives one mile from where I do; I think I know the general reputation he bears among his neighbors for truth and veracity; from what I understand from the neighbors that reputation is bad.

Int. From what you have heard his neighbors say about him as to his character for truth and veracity, and going upon the hypothesis that those reports are true, could you believe him on oath?

Ans. If the reports which I have heard be true, it would leave some scruples.

Int. State what you may have heard, if anything, as to Hodge's swearing falsely.

(Objected to, by defendants.)

Ans. I have heard as many as three men say they would not believe him on oath; I have no interest in the event of this suit; I saw Mr. Ham once; I would not know him if I was to see him.

W. S. WINCHESTER.

271 Sworn to and subscribed before me, this 18th day of April, A. D. 1877.

JOHN S. CRUM,
Master in Chancery of Johnson County, Ills.

Testimony of James C. Walker.

The deposition of JAMES C. WALKER, a witness produced, sworn, and examined on the — complainant, upon being duly sworn, deposes as follows, to wit:

My name is James C. Walker; my age is 39 years; my place of residence is in Bloomfield township, in Johnson county, Illinois; my occupation is farming.

I am acquainted with William R. Hodge, who lives somewhere about six miles from Vienna; I would suppose he is not far from 50 years of age; I live about two or three miles this side of where he does, on the same road; I know his general reputation among his neighbors for truth and veracity, that reputation is bad; from that reputation I would not believe him on oath if he was interested.

Interrogatory 1. From that reputation do you believe he
272 could be procured to testify falsely for money?

Objected to by def'ts.

Answer. If reports upon him be true, I believe it.

I have no interest in the event of this suit whatever.

I thought it was decided long ago; I am not acquainted with Mr. Ham; if I ever saw him I don't recollect it.

J. C. WALKER.

Sworn to and subscribed before me, this 18th day of April, A. D. 1877.

JOHN S. CRUM,
Master in Chancery of Johnson Co., Ills.

(At this point complainant was about to introduce testimony to prove the insolvency of Isaac N. Pearce, whereupon the defendants admit the insolvency of said Isaac N. Pearce.)

Testimony of Samuel Jackson.

The deposition of SAMUEL JACKSON, a witness produced, sworn, and examined on the part of complainant, upon being duly sworn, deposed as follows, to wit:

My name is Samuel Jackson; my age is 47 years; my
273 place of residence is in Vienna; in Johnson county, State of Illinois; my occupation is merchandising; I was a resident of Vienna at the time the contract for building the court-house was entered into, and have been ever since, and am now; I was doing business within 150 or 200 feet of the court-house during the building of it, and could see it hourly.

Mr. Ham and Mr. Pearce were the first men who *who* commenced work upon the court-house, Mr. Wickwire afterwards had the work in charge and completed it.

The interest we had in the completion of the job was that Mr. Ham owed us at the time some eighteen or nineteen hundred dollars, I do not recollect exactly.

When I use the term "we," I mean the firm of Bain & Jackson. In consequence of not getting his pay upon the railroad he pledged his interest in the court-house for his creditors as collateral security. If he failed to get his pay from the railroad his creditors were to have his interest in the court-house contract.

We looked after the matter, and watched with a good deal
274 of interest, because it was a sum of money we did not feel like losing. Some time, I do not remember the date, it must have been in January or February, 1871, to make his pledge more secure Mr. Ham made an assignment to us, for the benefit of all his creditors in Johnson county, of his interest in the court-house contracts.

That assignment was surrendered to Mr. Ham, I think, in 1872. After Mr. Ham got his money on the railroad, he paid us up and we surrendered the assignment. I was to some extent acquainted [with] the current value of county bonds about that time; they were rated at about 90 cents.

Interrogatory 1. What would be a reasonable compensation to defendant Kuykendall for his responsibility for the building of the court-house, and his time, expense, and trouble in negotiating the bonds, and doing whatever else may have been necessary for him to do under the circumstances in constructing the court-house?

Answer. I would think four or five, or six hundred dollars would be good pay, I think that would be a reasonable compensation.

Interrogatory 2. You may state fully as to your means of
275 observation concerning Ham's connection with the court-house enterprise about the time the contract was assigned to Ham and Pearce, and defendant Kuykendall's connection with it, and as to the value of lands.

Ans. The means were that I was intimately acquainted with Mr. Ham, and had business with him, and done business near the place where the building was going on. Along about July, August, and September, 1869, the work on the railroad had stopped, and Mr. Ham was debating in his own mind about whether to take the contract for building the court-house or not. I was urging him to do it, for I thought there would be a good profit in it, and it would better enable him to pay us what he owed us. The current value of bonds was about 90 cents; we bought some at 90 and some at 95.

Defendants object to all the evidence herein given.

Cross-examination:

We bought $200 in bonds at 75 cents on the dollar; I don't remember what time it was; we bought them of Thomas McDermott; the bonds we paid 90 cents for I have forgotten who we got them of;
276 those we bought at 95 cents we bought of John G. Evans, on a debt for borrowed money; John G. Evans is perfectly responsible, his note is as good as the money.

I am a brother-in-law of Mr. Harker, the counsel for complainant in this case.

Objected to by def'ts.

Re-examination:

My being Harker's brother-in-law makes no difference in my interest in this suit.

The circumstances under which we bought the bonds of McDermott were as follows, to wit: He was here from Anna, and wanted to sell me some bonds—court-house bonds; I told him we were very hard up for money, we had some money invested in tobacco, and were buying goods and paying money for them, and we had no money to invest in that way; he asked 85 or 90 cents for the bonds; he said he owed for a span of mules or horses, I don't recollect which, but it was a team, and was bound to have some money; I made him an offer of 75 cents on the dollar, which I had no idea he would take, and he took the offer.

SAM. JACKSON.

Subscribed and sworn to before me, this 19th day of April, 1877
JOHN S. CRUM,
Master in Chancery, Johnson Co.

277 *Testimony of James Burk.*

The deposition of JAMES BURK, a witness produced, sworn, and examined on the part of the complainant, upon being duly sworn, deposed as follows:

My name is James Burk; my age is 50 years; my place of residence is Vienna, Johnson county, State of Illinois; my occupation is selling goods; I am acquainted with the parties to this suit; I was a resident of Vienna at the time the court-house contract was let, and have been ever since; I was living here in 1870 and 1871, and was not particularly engaged at anything; was in business here in 1869 up to the spring of 1870. I was one of the railroad creditors of Charles I. Ham, the complainant; I recollect a conversation I had with Isaac N. Pearce; I think it was in May, 1870, in the spring of the year the court-house was building; work was progressing on the court-house under Wickwire.

I found he was going up to see Ham; I went to him and asked him where he was going and what he was going for; he said he
278 was going up to see him to get him to relinquish his claim upon the court-house, I think; I think that is the word he used—"relinquish."

Defendant Kuykendall was not present at that conversation.

JAMES BURK.

Sworn to and subscribed before me, this 19th day of April, A. D. 1877.

JOHN S. CRUM,
Master in Chancery of Johnson County, Ills.

Testimony of T. Chapman.

The deposition of TAMERLANE CHAPMAN, a witness produced, sworn, and examined on the part of the complainant, upon being duly sworn, upon his oath, deposed as follows, to wit:

My name is Tamerlane Chapman; my age is 39 years; my place of residence is Vienna, Johnson county, Illinois; my occupation is merchant; I have been continuously a resident of Vienna ever since the time the court-house was let in 1868; in 1869 and 1870 and 1871 I was practicing law as an attorney; I was a creditor of Mr. Ham while the railroad was building; I was Mr. Ham's attorney.

279 I recollect about the time the assignment was made by Kuykendall, as Frick's attorney, to Ham & Pearce of the court-house contract; I recollect of Ham doing some work on the foundation of the court-house in the fall of 1869; Mr. Wickwire subsequently built the house.

I had good means of observation of the work as it went on; there was hardly a day but what I saw what was done. I done business here on the square at the time. The court-house is in the center of the public square, as I understand it.

I was acquainted with what was understood to be the price of the court-house bonds, or the bonds issued for the building of the court-house, in 1869, 1870, & 1871. I understood their cash value to be about 90 cents; they were taken by merchants for goods at their face value; 90 cents was their current value in cash.

Def'ts object to this whole deposition.

Interrogatory 1. What would you consider a reasonable compensation to defendant Kuykendall for his responsibility, his time, expense, and trouble (being upon Frick's bond) for negotiating the bonds and doing whatever else may have been necessary for him to do under the circumstances, acting as the agent of Frick, and in time for Ham and Pearce?

280 Answer. It would be a difficult matter for me to fix the amount without examining the papers. I would put it all the way from four to six hundred dollars; that includes all the traveling expenses and all, from first to last.

I was acting as Ham's attorney in the matter and advising him. I have read the bond, contract, and specifications, &c., frequently.

T. CHAPMAN.

Sworn to and subscribed before me, this 19th day of April, 1877.

JOHN S. CRUM,
Master in Chancery of Johnson County, Ills.

(Endorsed:) Filed September 14, '81. J. A. Jones, clerk.

281 *Deposition.*

Circuit Court of the United States, Southern District of Illinois.

CHARLES I. HAM

vs.

ISAAC N. PEARCE and ANDREW J. KUYKENDALL.

Depositions of Charles I. Ham and S. P. Peabody, witnesses of lawful age, produced, sworn, and examined upon their corporal oaths, on the 25th day of April, A. D. 1877, at my office, No. 40 West 4th street, in the city of Cincinnati, county of Hamilton, and State of Ohio, by me, W. F. Boyd, a commissioner duly appointed by a *dedimus protestatum*, or commissioner, issued out of the clerk's office of the circuit court of the United States in and for the southern district of Illinois, with the seal of the said court affixed thereto, and to me directed as such commissioner, for the examination of said witnesses, in a certain suit and matter in controversy now pending and undetermined in said circuit court, wherein Charles I. Ham — complainant, and Isaac N. Pearce and Andrew J. Kuykendall were defendants, in behalf of the said complainant, upon the interrogatories
282 which were propounded by O. A. Harker, of counsel for complainant, neither of said defendants being present.

Testimony of Charles I. Ham.

Charles I. Ham, being first duly sworn by me as a witness in said cause, previous to the commencement of his examination, to testify the truth as well on the part of the plaintiff as the defendant, testified and deposed as follows, viz:

Int. 1. State your name, age, residence, and occupntion.

Ans. Charles I. Ham; age, about forty-five; residence, Chillicothe, Ohio; occupation, superintendent of bridges on the Marietta and Cincinnati railroad.

Int. 2. Was John Oliver a member of the county court of Johnson county, Illinois, at the time you presented the changes in the plans and specifications for the building of the court-house, and accepted with Mr. Pearce the assignment of the Frick contract made by Kuykenhall as Frick's attorney?

Ans. He was not.

Question 3. State the circumstances under which the changes were agreed to, and the assignment made.

283 Ans. These changes were drawn up by myself, and submitted to the court; and the assignment was made in the presence of A. J. Kuykendall, C. M. Stanton, my bookkeeper, and the court. It was done all at the same time, both the changes and the assignment. Both the changes and the assignment were placed of record by Mr. Stanton, at the request of the clerk of the court, and with the knowledge and consent of the court.

Quest. 4. State whether or not you were present at the taking of the depositions of Wm. Murphy and Jonathan C. Willis, at Cairo, Illinois.

Ans. I was.

Quest. 5. What have you to say concerning the conversation about which they testified, had at the Antrim House, in Cairo, in 1869, in the latter part of the summer or in the fall of that year?

Ans. In the latter part of August, or the first of September, 1869, I had in contemplation the taking of the assignment of the contract in company of I. N. Pearce for the building of the court-house in Vienna, Johnson county, Illinois. I was back and forth
284 several times to Cairo, in which times I had conversations very probably with Mr. Murphy about the taking of the contract, or going into the enterprise, as he was an intimate friend of mine. As to this conversation, testified to by Mr. Murphy and Mr. Willis, my mind has been refreshed by a conversation I had with Mr. Murphy, and also by hearing his testimony. I recollect distinctly of going to Cairo to examine the Cairo court-house, and particularly the cupola, so as to enable me to more fully and definitely make up my mind in regard to the changes to be made in the Vienna court-house.

Another object I had in view was to see Mr. Frick, and learn from him why it was he abandoned the contract for the Vienna court-house, and also to see him concerning the bonds that had already been issued to him and Kuykendall. Some of my friends at Vienna had advised me that they considered Mr. Frick a tricky man. After spending two or three days at Cairo examining the court-house, and having failed all this time to see Mr. Frick, I about made up my mind not to have anything to do with the contract. It must have been about this time that the conversa-
285 tion occurred. Afterward, I was assured by A. J. Kuydenhall that Frick had abandoned the contract; and so I made out the changes in the plans and specifications, and submitted them, and accepted the assignment of the contract.

Quest. 6. Have you ever been a guest of the Antrim House since the 9th of September, 1869?

Ans. I think in February, 1877. I never had any conversation with him after the 9th of September, 1869, till the time his deposition was taken in February, 1877.

Quest. 8. What was done by you relative to the court-house contract; and where were you from the 9th of September, 1869, until you sublet the contract in December, 1869, to Mr. Wickwire?

Ans. About the 11th or 12th of September, 1869, I left Vienna, taking with me part of the plans and specifications, and went to Cincinnati, Ohio, for the purpose of ascertaining the cost of the ornamental iron work, and also the iron vaults required for the building, and also to look after my interests in railroad matters. I think I was gone till about the first of October. After I returned to Vienna, I commenced work on the foundation of the court-
286 house with my men and teams. I continued this work, and was myself present all the time, till the weather became so bad that we could no longer prosecute the work. Then Mr. Pearce and myself consulted over the propriety of subletting the job. We concluded to do so, and I again started to Cincinnati for the pur-

pose of subletting it. At Cairo I met Mr. Wickwire, and was there several days, negotiating with him, and finally succeeded in subletting to him.

After the contract was made with Wickwire at Cairo, on the 8th day of December, 1869, which was signed about ten or eleven o'clock p. m., I was with Mr. Pearce all the time till we left Cairo together on the same train, about two or three o'clock next morning.

Quest. 9. Do you know William R. Hodge?

Ans. I do.

Quest. 10. Did you have a conversation with him in 1869, in Vienna, Illinois, in which you told him that your partner in the railroad business had gone to get a contract on a railroad; and if he obtained a contract, you would abandon the court-house contract, at the time you were laying the foundation?

287 Ans. No, sir; I did not. I say most emphatically that I had no such conversation with him then and there, and I never had any such conversation with him at any time or place.

Quest. 11. Did you, in September or October, 1869, about three miles west of Vienna, at a time when you were coming from Cairo, have a conversation with Hodge, in which you said that your partner had obtained a railroad contract, and that you were going away, and had abandoned the court-house contract, or would work no more upon it?

Ans. No, sir; I never had such a conversation with Mr. Hodge at that time or place, or anywhere, and never used any words to that effect. After accepting this contract I never intimated to any one that I had any intention of abandoning the contract, for I never had any such intentions, as I always thought there was big money in it—at least from $10,000.00 to $15,000.00.

CHARLES I. HAM.

Testimony of S. P. Peabody.

S. P. Peabody, of lawful age, a witness produced on behalf of complainant, being first duly sworn, testified as follows:

Quest. 1. State your name, age, residence, and occupation.

288 [Ans.] S. P. Peabody; age, 35 years; residence, Cincinnati, Ohio; occupation, clerk in railroad office.

Quest. 2. Are you acquainted with the parties to this suit?

Ans. I am with Mr. Ham and Mr. Pearce. I do not know Mr. Kuykendall.

Quest. 3. Where were you and in what business engaged December 8th, 1869?

Ans. In Cairo, Illinois; clerk for Dodge, Lord & Co., railroad contractors.

Quest. 4. If you wrote a certain contract of that date relative to the building of a court-house in Vienna, Johnson county, Illinois, state at whose instance and who were the parties to it.

Ans. This is a copy of the contract I wrote on that date. I wrote it at the instance of Mr. Ham, Mr. Pearce, and Mr. Wickwire, the parties thereto.

Quest. 5. If anything was said in your presence and in the presence of Mr. Pearce relative to the building of the court-house and the county bonds on that occasion, you may state it.

289 Ans. I don't recollect anything specially said at that time; the parties all seemed to be remarkably well satisfied with it, and expressed an expectation of making money out of it; Johnson county was considered as being good for its bonds; these court-house bonds were considered good securities; this contract was signed between ten and eleven o'clock at night; after that we all went to Louis Herbert's and got oysters.

Quest. 6. What then became of the parties?

Ans. After that the parties went out and we were all together till Mr. Ham and Mr. Pearce went away on the train together; that is, we all went to the depot together, and we left Mr. Ham and Mr. Pearce there at the train.

S. P. PEABODY.

I, William F. Boyd, of the county of Hamilton and State of Ohio, a commissioner duly appointed (by the *dedimus protestatum* hereto attached) to take the depositions of the said Charles I. Ham and S. P. Peabody, the witnesses whose names are subscribed to their foregoing depositions, do hereby certify that previous to the com-

290 mencement of the examination of the said Charles I. Ham and S. P. Peabody as witnesses in the said suit between the said Charles I. Ham, complainant, and the said Isaac N. Pearce and Andrew Kuykendall, defendants, said witnesses were duly sworn by me to testify the truth in relation to the matters in controversy between the said parties; that the said deposition was taken in my office, No. 40 West 4th street, in the city of Cincinnati, county of Hamilton, and State of Ohio, on the 25th day of April, A. D. 1877, and that after said depositions were taken by me as aforesaid, the interrogatories and answers thereto, as written down, were read over to the said witnesses, and that thereupon the same were signed and sworn to by the said witnesses respectively before me, the oath being administered by me at the place and on the day and year last aforesaid.

WILLIAM F. BOYD,
Commissioner.

Cin't., Ohio, April 25th, 1877.

(Endorsed:) Filed September 14, '81. J. A. Jones, clerk.

291 (DEFENDANT'S TESTIMONY.)

Captions of Depositions.

The depositions of W. W. Gould, Garner Pearce, James F. Calhoun, Caswell Barnett, Gilbert Barnett, Richard Elkins, T. B. Stewart, Wm. B. Pearce, John E. Betts, Thomas M. Evans, A. K. Cox, Ambrose W. Carlton, and A. J. Cox, of Johnson county, Illinois, witnesses of lawful age, produced, sworn, and examined on their respective oaths, on the 29th day of January, A. D. 1878, at my

office in the court-house in Vienna, by me, F. M. Jones, clerk of the county court in and for the county of Johnson, State of Illinois, witnesses in a certain suit now pending in the United States circuit court, seventh circuit, at Springfield, Illinois, wherein Charles I. Ham is complainant, and Andrew J. Kuykendall and Isaac N. Pearce is defendants, on behalf of the defendants, upon the interrogatories of the defendants, and upon none others, the said W. W. Gould, Garner Pearce, James F. Calhoun, Caswell Barnett, Gilbert Barnett, Richard Elkins, T. B. Stewart, Wm. B. Pearce, John E. Betts, Thomas W. Evans, A. K. Cox, Ambrose W. Carlton, and A. J. Cox, being first duly sworn by me as witnesses in the said cause, before the commencement of their examination, to testify
292 the truth, as well on the part of the complainant as the defendants, in relation to the matters in controversy between the said parties so far as they should be interrogated, testified as follows:

Testimony of W. W. Gould.

Deposition of W. W. GOULD, a witness produced in behalf of defendants.

State your name, age, residence, and occupation.

Answer. My name is W. W. Gould, and am 32 years of age; I reside in Johnson county, Illinois, and am by occupation a farmer.

Interrogatory. Are you acquainted with the parties to this suit?

Answer. I am acquainted with A. J. Kuykendall and I. N. Pearce; I am not personally acquainted with C. I. Ham.

Question. Are you acquainted with Wm. R. Hodge?

Answer. I am.

Question. What distance does he reside from your home?

Answer. I have lived within 4 miles of Wm. R. Hodge for a number of years.

Question. How loug have you known him?

Answer. I remember of knowing him for about 15 years.

Question. Are you acquainted with the general reputation of Wm. R. Hodge among his neighbors for truth and viracity?

Answer. Yes, sir; I suppose I am.

Question. What is that reputation?

Answer. Good, generally, as far as I know.

293 Question. From that reputation, would you believe Wm. R. Hodge on oath?

Answer. Yes, sir; I would.

W. W. GOLD.

Subscribed and sworn to before me, this Jan'y 29th, 1878.

F. M. JONES,
County Clerk.

Testimony of Garner Pearce.

Deposition of GARNER PEARCE, a witness produced in behalf of defendants.

Question. State your name, age, occupation, and place of residence?

Answer. Garner Pearce is my name; I am in my 49th year; my principal occupation is farming; my residence is north-west of Vienna, near the center of Elvira township, about 7½ miles.

Question. Are you acquainted with Wm. R. Hodge; if so, state how long you have known him?

Answer. I think I am pretty well acquainted with him; have known him since 1850.

Question. What distance does he reside from where you reside?

Answer. About 3 or 3½ miles.

Question. Are you acquainted with the general reputation of Wm. R. Hodge among his neighbors for truth and veracity?

Answer. I am tolerable well acquainted with the general reputation of him for truth and veracity.

294 Question. What is that reputation?

Answer. It is generally handled as good among his neighbors.

Question. From that reputation, would you believe Wm. R. Hodge upon oath?

Answer. I would.

GARNER PEARCE.

Subscribed and sworn to before me, this 29th day of Jan'y, 1878.

F. M. JONES.
County Clerk.

Testimony of Jas. F. Calhoun.

Deposition of JAMES F. CALHOUN, witness produced for defendants.

Question. State your name, age, occupation, and place of residence?

Answer. My name is J. F. Calhoun; age, 48 years; my occupation is farming; I live in in Elvira township, Johnson county, Ills.; I live northwest of Vienna, about 7½ miles.

Question. Are you acquainted with Wm. R. Hodge; if so, how long have you known him?

Answer. I am; I have known him about 17 years.

Question. How near has his place of residence been to yours during that time?

Answer. About 1½ miles.

Question. Are you acquainted with the general reputation of Wm. R. Hodge among his neighbors for truth and veracity.

295 Answer. I am.

Question. What is that reputation?

Answer. It is generally handled as good.

Question. From that reputation, would you believe Wm. R. Hodge upon oath?

Answer. I would.

J. F. CALHOUN.

Subscribed and sworn to before me, this Jan'y 29th, 1878.

F. M. JONES,
County Clerk.

Testimony of Caswell Barnett.

Deposition of CASWELL BARNETT, a witness produced on behalf of the defendants:

Question. State your name, age, residence, and occupation.

Answer. Caswell Barnett is my name; age, 42 years; reside in Elvira township, 6 miles west of north of Vienna, and am by occupation a farmer.

Question. Are you acquainted with the parties to this suit?

Answer. I am not acquainted with Ham, but am with the defendants?

Question. Are you acquainted with Wm. H. Hodge; and, if so, howlong have you known him?

Answer. I am; I have known him somewhere about 20 years.

Question. How close have you resided to him during that period?

Answer. About ¾ of a mile.

296 Question. Are you acquainted with the general reputation of Wm. R. Hodge among his neighbors for truth and viracity?

Answer. Yes.

Question. What is that reputation?

Answer. So far as I know, as a general thing it is good.

Question. From that reputation, would you believe Wm. R. Hodge upon oath?

Answer. Yes.

CASWELL BARNETT.

Subscribed and sworn to before me, Jan'y 29th, 1878.

F. M. JONES,
County Clerk.

Testimony of Gilbert Barnett.

Deposition of GILBELT BARNETT, a witness produced on behalf of the defendants:

Question. What is your name, age, residence, and occupation?

Answer. Gilbert Barnett is my name; age, 37 years; my residence is in Elvira township, Johnson Co., Ills., about 6 miles nearly north of Vienna; my occupation is farming.

Question. Are you acquainted with the parties to this suit?

Answer. I am not acquainted with Ham; I am with the defendants.

Question. Are you acquainted with Wm. R. Hodge; if so, how long have you known him?

Answer. I am acquainted with him; I have known him 15 years.

297 Question. What distance have you resided from him during that time?

Answer. The principal part of the time about ½ mile.

Question. Are you acquainted with the general reputation of Wm. R. Hodge among his neighbors for truth and veracity?

Answer. I am.

Question. What is that reputation?

Answer. Among the neighbors it is good.

Question. From that reputatiou would you believe Wm. R. Hodge upon oath?

Answer. I would.

GILBERT BARNETT.

Subscribed and sworn to before me, this Jan'y 29th, 1878.

F. M. JONES,
County Clerk.

Testimony of Richard Elkins.

Deposition of RICHARD ELKINS, a witness produced on behalf of the defendants:

Question. What is your name, age, residence, and occupation?

Answer. My name is Richard Elkins; age 49 years; I live in Elvira township, about 7 miles from Vienna, Ill's.; am a farmer by occupation.

Question. Are you acquainted with the parties to this suit?

Answer. I am not acquainted with Ham; I know the defendants.

Question. Are you acquainted with Wm. R. Hodge, and, if so, how long have you known him?

298 Answer. I am; I have known him about 15 years.

Question. What distance have you resided from him during that time?

Answer. Is not far from 4 miles.

Question. Are you acquainted with the general reputation of Wm. R. Hodge among his neighbors for truth and veracity?

Answer. I am as much so as I would be with any man living that distance.

Question. What is that reputation?

Answer. It is good, as far as I know, among his neighbors.

Question. From that reputation would you believe him upon oath?

Answer. Yes, sir, I would.

his
RICHARD ✕ ELKINS.
mark.

Subscribed and sworn to before me, this 29th day of Jan'y, 1878.

F. M. JONES,
County Clerk.

Testimony of F. B. Stewart.

Deposition of T. B. STEWART, a witness produced on behalf of the defendants:

Question. What is your name, age, residence, and occupation?

Answer. My name is T. B. Stewart; am 36 years of age; I reside

in Elvira township, 7 or 7½ miles northwest of Vienna, Johnson county, Illinois, and by occupation a farmer.

299 Question. Are you acquainted with the parties to this suit?

Answer. I am not acquainted with Ham; I am with the defendants.

Question. Are you acquainted with Wm. R. Hodge; and, if so, how long have you known him?

Answer. I have been acquainted with him about 20 years.

Question. How close have you resided to him during that time?

Answer. I lived within 1 mile of him most of the time.

Question. Are you acquainted with the general reputation of Wm. R. Hodge among his neighbors for truth and veracity?

Answer. Yes.

Question. What is that reputation?

Answer. It is good, as far as I know.

Question. From that reputation would you believe Wm. R. Hodge upon oath?

Answer. I would.

T. B. STEWART.

Subscribed and sworn to before me, this Jan'y 29th, 1878.

F. M. JONES,
County Clerk.

Testimony of W. B. Pearce.

Deposition of W. B. PEARCE, a witness produced on behalf of the defendants:

Question. What is your name, age, residence, and occupation?

Answer. W. B. Pearce is my name; age, 61 years; I reside

300 in Elvira township, Johnson county, Illinois, about 7 miles northwest of Vienna; my occupation is farming.

Question. Are you acquainted with Wm. R. Hodge; and, if so, how long have you known him?

Answer. Yes; have known him about 25 or 30 years, & 9 years of that time I lived within ½ mile of him.

Question. Are you acquainted with the general reputation of Wm. R. Hodge among his neighbors for truth and veracity?

Answer. I am.

Question. What is that reputation?

Answer. Good, so far as I know.

Question. From that reputation would you believe Mr. Hodge upon oath?

Answer. I would.

Question. What township does Wm. R. Hodge reside in?

Answer. Elvira township.

W. B. PEARCE.

Subscribed and sworn to before me, this Jan'y 29th, 1878.

F. M. JONES,
County Clerk.

Testimony of John E. Betts.

Deposition of JOHN E. BETTS, a witness produced on behalf of the defendants:

Question. What is your name, age, residence, and occupation?

Answer. John E. Betts is my name; age, 68 years; I reside
301 in Elvira township, Johnson county, Illinois, and am by occupation a farmer.

Question. Are you acquainted with the parties to this suit?

Answer. I am not acquainted with Ham; I am with the defendants.

Question. Are you acquainted with William R. Hodge; and, if so, how long have you known him?

Answer. I am. I have known him about 13 or 14 years.

Question. Are you acquainted with the general reputation of Wm. R. Hodge among his neighbors for truth and veracity?

Answer. I am.

Question. What is that reputation?

Answer. Good.

Question. From that reputation, would you believe Mr. Hodge upon oath?

Answer. I would.

his
JOHN E. x BETTS.
mark.

Subscribed and sworn to before me, this Jan'y 29th, 1878.

F. M. JONES,
County Clerk.

Testimony of Thomas M. Evans.

Deposition of THOMAS M. EVANS, a witness produced on behalf of the defendants:

Question. What is your name, age, residence, and occupation?

Answer. My name is Thomas M. Evans; age, 42 years; I
302 live in Elvira township, about 7 miles northwest of Vienna, and am a farmer by occupation.

Question. Are you acquainted with the parties to this suit?

Answer. I am not acquainted with Ham. I am acquainted with the defendants.

Question. Are you acquainted with William R. Hodge; and, if so, how long have you known him?

Answer. I am. I have known him 20 years.

Question. Are you acquainted with the general reputation of Wm. R. Hodge among his neighbors for truth and veracity?

Answer. Yes, sir; I am acquainted with it.

Question. What is that reputation?

Answer. It is good.

Question. From that reputation, would you believe him upon oath?

Answer. I would.

Question. What distance have you resided from Wm. R. Hodge during the 20 years mentioned by you?

Answer. About ¾ of a mile.

THOMAS M. EVANS.

Subscribed and sworn to before me, this Jan'y 29th, 1878.

F. M. JONES,
County Clerk.

Testimony of A. K. Cox.

Deposition of A. K. Cox, a witness produced on behalf of the defendants:

303 Question. What is your name, age, residence, and occupation?

Answer. My name is A. K. Cox; age, 33 years; I reside in Elvira township, Johnson county, Ill's, and am a farmer by occupation.

Question. Are you acquainted with the parties to this suit?

Answer. I am not acquainted with Ham; I am acquainted with the defendants.

Question. Are you acquainted with Wm. R. Hodge?

Answer. Yes, sir; I have known him about 18 years.

Question. What distance have you resided from him during that time?

Answer. From ¾ to 1 mile.

Question. Are you acquainted with the general reputation of Wm. R. Hodge among his neighbors for truth and veracity?

Answer. I think I am.

Question. What is that reputation?

Answer. Good, as far as I know.

Question. From that reputation, would you believe him upon oath?

Answer. I would.

A. K. COX.

Subscribed and sworn to before me, this Jan'y 29th, 1878.

F. M. JONES,
County Clerk.

Testimony of Ambrose W. Carlton.

304 Deposition of AMBROSE W. CARLTON, a witness produced on behalf of the defendants:

Question. What is your name, age, residence, and occupation?

Answer. My name is Ambrose W. Carlton; age, 46 years; I reside 6 miles a little west of north of Vienna, in Elvira township, Johnson county, Illinois, and am by occupation a farmer.

Question. Are you acquainted with the parties to this suit?

Answer. I am acquainted with Kuykendall and Pearce, and have seen Ham a time or two, but am not acquainted with him.

Question. Are you acquainted with Wm. R. Hodge; and, if so, how long have you known him?

Answer. I am; have known him 20 years; during a great deal of that time I have resided within ½ mile of him.

Question. Are you acquainted with the general reputation of Wm. R. Hodge among his neighbors for truth and veracity?

Answer. Yes.

Question. What is that reputation?

Answer. It is good.

Question. From that reputation, would you believe him upon oath?

Answer. I would believe him on oath.

A. W. CARLTON.

Subscribed and sworn to before me, this Jan'y 29th, 1878.

F. M. JONES,
County Clerk.

305 *Testimony of A. J. Cox.*

Deposition of A. J. Cox, a witness produced on behalf of the defendants:

Ques. What is your name, age, residence, and occupation?

Ans. My name is A. J. Cox; age, 23 years; I live in Elvira township, about 6½ miles northwest of Vienna, in Johnson county, Illinois, and am a farmer by occupation.

Ques. Are you acquainted with the parties to this suit?

Ans. I am not acquainted with Ham; I am acquainted with the defendants.

Ques. Are you acquainted with Wm. R. Hodge; and, if so, how long have you known him?

Ans. I am; I have known him from my childhood up to this time.

Ques. Are you acquainted with the general reputation of Wm. R. Hodge among his neighbors for truth and veracity?

Ans. I think I am.

Ques. What is that reputation?

Ans. I think it is good.

Ques. From that reputation would you believe him upon oath?

Ans. I would.

A. J. COX.

Subscribed and sworn to before me, this Jan'y 29th, 1878.

F. M. JONES,
County Clerk.

306 STATE OF ILLINOIS, } ss:
Johnson County, }

I, the above-named F. M. Jones, of Vienna, Johnson county, Illinois, clerk of the county court of Johnson county, Illinois, do certify that, before the commencement of their several examinations as witnesses in the said suit between Charles I. Ham, complainant, and the said Andrew J. Kuykendall and Isaac N. Pearce, defendants, they, the said W. W. Gould, Garner Pearce, James F. Calhoun, Caswell Barnett, Gilbert Barnett, Richard Elkins,

T. B. Stewart, Wm. B. Pearce, John E. Betts, Thomas M. Evans, A. K. Cox, Ambrose W. Carlton, and A. J. Cox, were severally duly sworn by me to testify the truth in relation to the matters in controversy between the said parties, so far as they, the several said witnesses, should be interrogated concerning the same.

That the said depositions were taken at my office, in the court-house in Vienna, on the 29th day of January, A. D. 1878, and that after the said depositions were taken by me, as aforesaid, the interrogatories and the answers thereto as written down were read over to each of the said witnesses, and that thereupon the said several depositions were signed and sworn to by the said W. W. Gould, Garner Pearce, James F. Calhoun, Caswell Barnett, Gilbert
307 Barnett, Richard Elkins, T. B. Stewart, Wm. B. Pearce, John E. Betts, Thomas M. Evans, A. K. Cox, Ambrose W. Carlton, & A. J. Cox before me at the place and on the day last aforesaid.

[L. S.] F. M. JONES,
County Clerk.

(Indorsed:) Filed February 4, 1878. J. A. Jones, clerk.

308 *Testimony of John Oliver.*

CHARLES I. HAM
vs.
A. J. KUYKENDALL and ISAAC N. PEARCE.

The usual caption and certificate are waived by the parties.

JOHN OLIVER, a witness produced, sworn, and examined on the part of the said defendants, deposed and testified as follows, to wit:

Interrogatory 1st. State your name, age, and place of residence.

Answer. My name is John Oliver; my age is seventy-eight years; and my place of residence is in Johnson county, State of Illinois.

Interrogatory 2nd. State whether or not you are acquainted with the parties to this suit, or either or which of them, and how long you have known him or them.

Answer. I am acquainted with Isaac N. Pearce and Andrew J. Kuykendall, and have known them for many years. I am not acquainted with Charles I. Ham.

Interrogatory 3d. Was you county judge of Johnson county, Illinois, from fall the years of 1869 to the month of February, A. D. 1871, during the building of the court-house in Vienna?

Answer. I was

309 Interrogatory 4. Who did you recognize as the party responsible for the completion of the house according to the original contract between the county and J. K. Frick?

Answer. A. J. Kuykendall, as the security of Frick.

Complainant objects.

Interrogatory 5. Did the court ever recognize the assignment of the contract with Frick, made by Kuykendall, as Frick's agent, to Ham and Pearce?

Answer. We did not.

Complainant objects.

Interrogatory 6. Was that assignment ever put upon the record of the court by or with the knowledge or consent of the court?

Answer. It was not.

Complainant objects.

Interrogatory 7. Did you ever recognize Ham & Pearce as contractors of the court-house?

Answer. I did not. I did not know they had any claim for building the court-house until after it was completed.

Interrogatory 8. Who was the business transacted with,
310 and who was final settlement made with, with regard to building the court-house?

Ans. A. J. Kuykendall, as Frick's security and agent.

Cross-examination by complainant's solicitor:

Cross-interrogatory 1. Did not the defendant, Kuykendall, tell you that you could not recognize anybody as responsible for completion of Frick's contract but him, as Frick's security?

Answer. He never told me anything about it. If he did, I don't recollect it.

Cross-int. 2. Did not Kuykendall ever tell you that you could recognize no one in the court-house contract but Frick and him, as Frick's attorney and security?

Ans. If ever he said a word to me about it I don't recollect it.

JOHN OLIVER.

Sworn to and subscribed before me, this 12th day of February, A. D. 1877.

JOHN S. CRUM,
Master in Chancery of Johnson County, Illinois.

(Endorsed:) Filed June 25, 1879. J. A. Jones, clerk.

311 In the matter of CHARLES I. HAM
vs.
ANDREW J. KUYKENDALL & ISAAC N. PEARCE.

Testimony of John Carter.

JOHN CARTER, a witness produced, sworn, and examined on the part of the defendants, upon being duly sworn according to law, deposed as follows:

My name is John Carter; my age is 46 years; my place of residence is Johnson county, Illinois; my occupation is a farmer and blacksmith. I was commissioned associate justice of the peace of Johnson county, State of Illinois, on the 16th day of June, A. D. 1870; served as such until in March, A. D. 1872 or 1873.

312 Interrogatory 1. What time was the court-house finished and received?

Answer. It was January 19, 1871.

Int. 2. Who did the court hold responsible for the completion of the court-house, according to the original contract between Frick and the county?

Ans. We held Frick and Kuykendall as his bondsman.

Int. 3. Did the court at any time, while you was a member, recognize Ham & Pearce as the contractors on the Johnson county court-house?

(Objected to by the council for complainant.)

Ans. I did not, and the court did not, that I know of.

No cross-examination.

JOHN CARTER.

Sworn to and subscribed before me, this 28th day of February, A. D. 1877.

JOHN S. CRUM,
Master in Chancery of the Circuit Court of Johnson County, Illinois.

313 *Testimony of B. S. Smith.*

B. S. SMITH, a witness produced, sworn, and examined on the part of the defendants, being duly sworn, deposes as follows, to wit:

My name is Barnabas S. Smith; my age is 74 years; my place of residence is Vienna, Johnson county, State of Illinois; my occupation is farming.

Interrogatory 1. What was your occupation from the first of the year 1869 to March, 1871.

Answer. I was clerk of the county court of Johnson county, State of Illinois.

Int. 2. Was the assignment by Kuykendall, as Frick's agent, of the contract on the court-house put on the records of the county court by order of the county court?

(Objected to by complainant.)

Ans. They were not; it was done in vacation.

Cross-examination:

The assignment above referred to is on the same pages of the record that the charges are on, that were agreed to between Frick through his att'y, A. J. Kuykendall, and the county court, on the 9th of September, 1869, on pages 380 & 381, in Book "B." It was all written by the same man, and he was working for Ham. I don't recollect his name. I don't recollect who proposed those 9 changes.

314 Rebuttal:

The record shows that the assigned was put on record in vacation of court. I refer to the record, and that shows that it was done in vacation. I do recollect seeing the man put it there, but have no recollection, of my own knowledge, whether it was done in vacation or not.

B. S. SMITH.

Sworn to and subscribed before me, this 28th day of February, 1877.

JOHN S. CRUM,
Master in Chancery of the Circuit Court of Johnson County, Ills.

Testimony of Wm. R. Hodge.

WM. R. HODGE, a witness produced, sworn, and examined on the part of the defendants, on being duly sworn according to law, deposed as follows, to wit:

My name is William R. Hodge; my age is 53 years; my place of residence is Johnson county, State of Illinois; my occupation is farming. I was acquainted with Charles I. Ham, the complainant in this suit, in the year A. D. 1869.

Interrogatory 1. What business was you engaged in, in the spring and summer of 1869?

315 Answer. I was engaged in working on the Cairo & Vincennes railroad in the year 1869.

Int. 2. Who was you working under?

Ans. I was working under Ham on a contract I had taken from him.

Int. 3. Did you ever have any conversation with Charles I. Ham with reference to what he owed you for work done on the railroad?

Ans. I did.

Int. 4. You can state when and where you had the first conversation upon that subject and what it was.

Ans. It was here in Vienna, and my best recollection is that it was in the month of September, 1869, the day that I was here. (I don't recollect the exact day, but my recollection is that it was in September, somewhere about the 14th or 15th.) He was hauling some big square rocks to lay the foundation, he said. I named to Mr. Ham that I was very much in need of some funds, and he said that he was strapped himself, I think, was the language he used. I told him that I imagined that he was engaged in this court-house matter here, and there would be some prospect of obtaining some means. He stated then that he had hands here; that he

316 was holding them for the purpose of not letting them squander, I think was the language he used, and not letting them get away until he could hear from his partner; that his partner, he said, was gone to get a contract on another railroad. I do not know what point; he did not say, and I did not ask him. He said if he obtained a contract he would abandon the court-house contract. That is the best of my recollection of what he said.

Interrogatory 5. If he said anything about building court-house, or about building railroads, state what it was.

(Objected to by complainants.)

Answer. He said he was better acquainted with building railroads than court-houses, was the language that the used; that was all the conversation that was had that day on that subject.

Interrogatory 6. Did you at any other time or place have any

other conversation with Ham upon this subject? If so, state when and where it was, and what it was.

Answer. I did; it was about, I rec-on, 3 miles west of Vienna, at the old Billy south farm; it was some two weeks or more after the first conversation; I don't recollect exactly. I *meets* him com-
317 ing from Cairo. I had learned in town that he had been to Cairo, and I had business out that way, and met him. I asked him what the news was. He expressed himself about this way: "That his partner had obtained a contract, and he was going right away." Well, he either stated that he had abandoned the court-house contract, and he would work no more on it or at it. I don't recollect which word the man used; I think he said on it; and then, of course, I asked him about my own condition again. I was more interested in that than anything else; that is what I was in search of. He stated that he could not pay me anything until he obtained it from the company; that the thing was boiling down, and would soon be settled, I think was about the language that he used.

Interrogatory 7. Was anything else said in that conversation?

Answer. That was about all; he was in a considerable of a hurry.

Interrogatory 8. What kind of a contract did he say has partner had obtained?

Answer. It was a contract on a railroad, as I understood it.

Interrogatory 9. In answer to interrogatory 6, you stated
318 that Ham told you he could not pay you anything until he obtained it from the company. State what company.

Answer. I understood him to mean the company that was engaged on the Cairo & Vincennes railroad; of course he was engaged with that company, and I understood him to mean that company.

Interrogatory 10. How long after you had this second conversation with Ham was it until he did leave Illinois, if he left the State at all?

Answer. I don't know how long it was; I never saw him any more.

Interrogatory 11. How long after you had that second conversation was it uutil you saw him again?

Answer. I don't recollect how long it was, but it seems to me it was some considerable time; he had resumed his office here and was trying to make settlement.

Interrogatory 12. For what purpose was he here?

Answer. As I understood it, he was here for the purpose of settling off with hands who had done work for him on the Vincennes railroad; if he had any other business, I don't know what it was.

319 Cross-examination:

When did you first inform the defendants of these conversations with Ham?

Answer. I never have reported anything to Pearce about it that I recollect of; I think it was some time last March I met Kuykendall here in town, and he asked me about it, and I told him about what I have told you.

Cross-interrogatory 2. Had you ever told it to any one before that time?

Answer. Yes, I think I had, some week or two prior to that time; I told it to Esquire Damron; he was doing some business for me, and says he "Say, did ever you hear Ham say anything about abandoning his contract in regard to the court-house?" I told him I did; he asked me what he said, and I told him that he said if his partner obtained a contract he did not expect to work on the court-house; then he told me that he was in a hurry, and he would see me again, and then I saw Kuykendall and had a conversation with him.

Cross-interrogatory 3. Had you ever told it to any one before you told it to Damron?

Answer. No; not that I recollect of.

Cross-interrogatory 4. What business was Damron in there,
320 and what business is he in now?

Answer. I suppose that he was practicing law then, and suppose he is now.

Cross-interrogatory 4. Have you not recently read, or heard read, the affidavit, or a copy of it, that you made before Mr. Crum in this cause?

Answer. Yes; when I come into town, a little while ago, I asked Mr. Damron if he had that affidavit; he said he had, and he read a portion of it; it did not make any particular difference with me, in saying a little while ago, I mean to-day, an hour or an hour and [a] quarter ago; Damron asked me if I wanted to hear it read; I told him yes, I had no objection; he read a portion of it, and I told him I thought I could recollect the particulars.

Cross-interrogatory 5. In your examination-in-chief you say that your first conversation with Ham, as related, was about the 14th or 15th of September, 1869, and in your affidavit you swear that your second conversation was some two weeks after the first; your second conversation, then, must have been about the first of October, was it not?

Answer. It might have been along about then; I don't recollect; it was not as late as the tenth of October.

321 Cross-interrogatory 6. How much was due you from Ham on your contract?

Answer. According to the estimate that was given me by his clerk & surveyors there was about $800.00

Cross-interrogatory 7. Has that estimate ever been paid off?

Answer. I was in such a shape, on account of the road-bed being moved, that he did not consider himself bound to pay it.

Cross-interrogatory 8. At the time of your first conversation with Ham, did you not know that Pearce was a partner with him in the court-house job?

Answer. I did not, only from what Ham said himself, that he would abandon the contract and give it over to Pearce; he did not say that Pearce was his partner in that conversation.

Cross-interrogatory 9. Do I understand you to say that you did

not know anything about Pearce's having any interest in the court-house job at that time?

Answer. Yes; you understood me to say that I never understood at that time that he was a partner.

Cross-interrogatory 10. At the time of that conversation,
322 then, you did not think Pearce had any interest in the contract, did you?

Answer. I did not know anything about it.

Cross-interrogatory 11. At the time of your second conversation with Ham, you did not think Pearce was Ham's partner, or had been, did you?

Answer. I did not know anything about it. When I first met him I did not know anything about it. He went on to state that he was going away and had abandoned the contract, or was going to abandon it, and give it over to Pearce.

Cross-interrogatory 12. Who did you understand was laying the foundation, Ham, or Ham & Pearce?

Answer. I understood from Ham's conversation that he was engaged in it, from tne fact that he was engaged in it with his hands and teams, and he never denied it when I named it to him; and I had understood that he was the man that was to build the court-house.

Cross-interrogatory 13. You have never heard, then, that Ham & Pearce took the contract to build the house together?

323 Answer. No, I had not at that time; and I don't know that I have learned it up to this time, only what I learned from Ham's conversation above alluded to.

Cross-interrogatory 14. Your understanding has been this, then, has it not: That Ham alone was engaged in building the court-house; that Pearce was not his partner; and that Ham had abandoned the contract and turned it over to Pearce?

Answer. Yes.

Cross-interrogatory 15. You have never stated, then, that Pearce was Ham's partner in the building of the court-house, have you?

(Objected to by def'ts.)

Answer. No; I guess not.

Cross-interrogatory 16. You have never stated that at the time you had the first conversation with Ham, in Vienna, "Ham & Pearce were laying the foundation to the court-house."

Answer. No; I never have stated that Ham & Pearce were laying the foundation; I never saw Pearce engaged in it; never heard of it then.

Cross-interrogatory 17. In the affidavit made by you to be read on the motion for a rehearing, did you not state that Pearce
324 was Ham's partner in the building of the court-house in the fall of 1869, and that at the time you had your first conversation with Ham here in Vienna, that Ham & Pearce were laying the foundation for the court-house?

Answer. If I did, I have no recollection of it; I don't think I did.

Cross-interrogatory 18. Who was Ham's partner in the railroad contract?

(Objected to by def'ts.)

Answer. I think it was Lucas; I don't recollect the style of the firm; I think it was Lucas & Ham.

Cross-interrogatory 19. In the first conversation you had with Ham, did he state that Lucas "had gone off"?

Answer. No, he said his partner; he did not say anything about Lucas that I recollect of; he said his partner had gone off.

Cross-interrogatory 20. Was any one present besides yourself and Ham?

Answer. When I first saw him there was a man present, and I think it was Bill Malaes; am not positive; it seems to me it was him. Work had suspended on the road, and Mr. Ham stated to me that he thought it would resume soon and we would all get our money; I then lived six miles from Vienna.

Cross-interrogatory 21. How often do you come to town?

325 Answer. Sometimes from three to five or six months, and sometimes oftener, it depends on my business. I have talked to defendant Kuykendall three times about this matter, once when I first told him of it and when he took my affidavit, and then yesterday I talked to him about it.

Cross-interrogatory 22. In the second conversation with Ham, did he say that he had abandoned the court-house contract or the work on the court-house?

Answer. He said he had abandoned the work on the court-house and gave it over to Pearce; that is about the conversation he used. I am certain that he used the word "abandon."

Cross-interrogatory 23. The first thing he said to you, then, was that he had abandoned the work and give it over to Pearce, was it not?

Answer. No, there were several words passed before that; I think it was after he had told me that his partner had got a contract that he told me about abandoning the work; I asked about my matter after that.

WM. R. HODGE.

Sworn to and subscribed before me, this 28th day of February, 1877.

JOHN S. CRUM,
Master in Chancery of the Circuit Court of Johnson Co., Ill's.

326 *Testimony of Samuel Hess.*

SAMUEL HESS, a witness produced, sworn, and examined on the part of the defendants, on being duly sworn, deposed as follows, to wit:

My name is Samuel Hess; my age is 52 years; my place of residence is Vienna, Johnson county, State of Illinois; my occupation is farming.

Interrogatory. Where did you reside from the spring of 1869 to the spring of 1871?

Answer. In Vienna.

Interrogatory 2. If the court should hold that A. J. Kuykendall was acting as agent for J. K. Frick, and in trust for Ham & Pearce, in constructing the court-house in Vienna, what would be a reasonable per cent. on the contract price for Kuykendall's trouble, expense, and responsibility in constructing the court-house, the contract price being $38,355.00?

Answer. I should put it at about 12½ per cent. on the contract price.

(Objected to by the complainant.)

SAMUEL HESS.

Sworn and subscribed before me, this first day of March, 1877.

JOHN S. CRUM,
Master in Chancery of the Johnson County Circuit Court.

327 *Testimony of A. J. Henry.*

A. J. HENRY, a witness produced, sworn, and examined on the part of the defendants, on being duly sworn according to law, deposed as follows, to wit:

My name is A. J. Henry; my age is 47 years; my place of residence is Vienna, Johnson county, Illinois; my occupation is a carpenter.

Interrogatory 1. Was you, or was you not, appointed by the county court of Johnson county, Illinois, superintendant on the part of the county in the building of the court-house under the Frick contract, and did you serve as such?

Answer. I was; I served as such.

Interrogatory 2. If the court should hold that A. J. Kuykendall was acting as agent for J. K. Frick, and in trust for Ham & Pearce, in constructing the court-house in Vienna, what would be a reasonable per cent. on the contract price for Kuykendall's trouble, expense, and responsibility in constructing the court-house, the contract price being $38,355.00?

Answer. I would say 15 per cent.

Cross-examination:

328 Cross-interrogatory 1. How much did you receive from the county court for your services as superintendant?

Answer. I believe it was one per cent., is my recollection.

Cross-interrogatory 2. What were your duties as such superintendant?

Answer. In the first place I had agreed to work on the house; Judge Smith came up to my house to see me; he told me that they had decided to dismiss Hatt; Hatt had been appointed superintendant. I was to come down once or twice a week and examine the work and see that it was done according to the contract as I under-

stood it. I told him that I had agreed to work on it and I did not want to superintend it; he said that would make it all the better, that I would be there all the while and that they would give me the same that they were to give Hatt, one per cent., and I agreed to do it; when a payment was to be made I had to certify that the work was so far along; the payments were to be made in installments; I was appointed superintendant about the time that Frick left.

Cross-interrogatory 3. Was you appointed superintendant at the time the contract was entered into between Frick and the county court?

Answer. I was not.

Cross-interrogatory 4. If you were not appointed superintendent at the time the contract was entered into between Frick
329 and the county court, how is it that in the contract you are mentioned as the superintendent?

Answer. I was not notified that I was appointed superintendent until some time after I was appointed, probably the next year.

Cross-interrogatory 5. During the few moments complainant's attorney has been out of the room, did not Kuykendall say something to you about your appointment or the time you was notified of your appointment?

Answer. I don't know; while you was out, Damron was reading the contract; somebody asked me when I was notified; I was under the impression that it was Mr. Harker.

Cross-interrogatory 6. Do you pretend to say that you were not notified of your appointment until the next year after the contract was entered into?

Answer. My impression is that it was the next year.

Cross-interrogatory 7. Were you superintendant, and don't you know you were, at the time the injunction suit of Albright and others against the county court was commenced in the spring of 1869?

Answer. I cannot tell you whether I was or not; I paid no attention to it until the work commenced.

330 Cross-interrogatory 8. Was you superintendant at the time the 8 changes were agreed to on the 9th of September, 1869?

Objected to, by def'ts.

Answer. I was; I cannot tell who suggested the changes; I was not present when the changes were made; there were some changes agreed upon at the Perkins House; they effected the cost of the building; a good deal of stone-work was left out, and brick-work substituted in place of it; the cost of it was materially lessened, but I can't state how much; I thought before the changes were made that the house could not be built for the price agreed upon.

Cross-interrogatory 9. If Frick had built the house according to the contract before any changes were made, he would have lost money at it, would he not?

Objected to, by def'ts.

Answer. I think he would.

Cross-interrogatory 10. What would be a reasonable net proffit for a contractor constructing a building worth $40,000, occupying not more than one year in its construction?

Answer. A contractor on a job of that size ought to be sure that he is going to make at least $5,000; he might be satisfied with more or less.

Cross-interrogatory 11. Do you think Kuykendall's com-
331 pensation should be measured by the proffits realized in the building?

Answer. I would think not; if there had been no proffits he would not have got anything, but still he ought to have it whether there was proffits or not; I have lived in Vienna continuously since 1865.

A. J. HENRY.

Sworn to and subscribed before me, this first day of March, 1877.

JOHN S. CRUM,
Master in Chancery of the Circuit Court of Johnson County, Illinois.

Testimony of A. J. Kuykendall.

A. J. KUYKENDALL, a witness produced, sworn, and examined on the part of the defendants, being duly sworn according to law, deposed as follows, to wit:

My name is A. J. Kuykendall; my age is 61 years; my place of residence is Vienna, Johnson county, Illinois; my occupation is farming and stock-raising; I am one of the defendants in this cause.

Interrogatory 1. Please state how much funds came into your hands for the construction of the court-house as Frick's agent under
his contract with the county court of Johnson county, and
332 what disposition you made of said funds, if any.

Answer. The contract price was $38,357.00; in answering the balance of the question I can only give whole numbers, fractions not being distinctly recollected. I received from the court the amount of the contract price in county bonds, or their equivalents. J. K. Frick used $700.00 of the bonds before the injunction was served upon the county court and myself, leaving in my hands, or due from the county when court-house completed at the time he abandoned the contract, $37,657.00, of which I sold $16,000 at 80 cts. to the dollar, which brought $12,800.00. I sold $9,357.00 at 90 cts. to the dollar, making $8,421 and some cents, and collected upon coupons off of said bonds $930.00. I paid out to I. N. Pearce and N. L. Wickwire, in money, $18,200.00; in county bonds, $12,300.00; the remainder is still in my hands; my trouble, time, expense, and responsibility I charge 12 per cent. on the contract price of said court-house.

Cross-examination:

Frick got the $700 in county bonds from me. I had drawn one-fourth and was holding them as his agent. Frick did not receive

any of the bonds from the court. I received all the funds from the county court as Frick's agent. When I sold these bonds
333 some of the purchasers accounted to me for the accrued interest and some did not; whenever I could make a trade of that kind I made it, but in some cases I could not do it. Howick got not far from $15,000 of the bonds.

Cross-interrogatory. Your testimony to-day does not agree with your sworn statement submitted to the court on the argument of the motion for a rehearing, does it?

Answer. In the fractions there may be some little difference, but I think the whole numbers are about the same. I stated in my affidavit that I thought ten per cent. was reasonable; that is my recollection, but fix no value in this deposition.

Cross-interrogatory 2. While you were acting in the capacity you have described, as Frick's agent, did you not keep an account of your receipts and disbursements?

Answer. Yes, partially; when I would receive money I deposited it with Pearce; he was keeping my books, and I made a minute of *of* it, and drew orders on Pearce. I kept no account of the receipts, or I only kept an account as I paid it over to Pearce.

Cross-interrogatory 3. Can you give the names of all the parties to whom you sold bonds?

Answer. I cannot; there were a great many of the sales
334 made verbally on the streets, and the parties sent to Pearce, with whom the bonds were deposited, and who was keeping my books. I think it likely there was some accumulated interest collected that is not accounted for in my general statement; there is no record by which I can tell the exact amount, but I feel certain that the whole amount would not exceed $100 above what I have accounted for. The first installment of bonds, except the $700, were in my hands a year, and drew a year's interest before the contract was let to Ham & Pearce.

A. J. KUYKENDALL.

Sworn to and subscribed before me, this 1st day of March, 1877.

JOHN S. CRUM,
Master in Chancery of the Circuit Court of Johnson Co.

(Indorsed:) Filed September 14, '81. J. A. Jones, clerk.

335 In the Circuit Court of the United States, Southern District of Illinois.

CHARLES I. HAM
vs.
ANDREW J. KUYKENDALL and ISAAC N. PEARCE. } In Chancery.

UNITED STATES OF AMERICA,
Southern District of Illinois, } *ss:*

The depositions of William M. Murphy and Jonathan C. Willis, witnesses of lawful age, produced, sworn, and examined, in pursuance of the annexed notice, on the 15th day of February, A. D.

1877, at the office of the internal revenue collector, in the custom-house, in the city of Cairo, Alexander county, Illinois, by me, H. H. Candee, a United States commissioner in & for said southern district of Illinois, an officer authorized by law to take depositions in such cases, in a certain cause now pending in the circuit court of the United States, seventh circuit, for the southern district of Illinois, wherein Charles I. Ham is complainant and Andrew
336 J. Kuykendall and Isaac N. Pearce are defendants, in behalf of said defendants.

Testimony of Wm. M. Murphy.

The said WILLIAM M. MURPHY, being first duly sworn by me to testify the truth, the whole truth, and nothing but the truth, deposed as follows:

My name is William M. Murphy; I am thirty-eight years of age; I reside in Cairo, Illinois; my occupation is clerk. I am acquainted with the parties to this suit, and have known them all since the year 1869. I had a talk with Mr. Ham about other matters, and with the other matters the subject of the building of the court-house at Vienna came up. It came up in about this way: Mr. Ham and I were talking about other matters, as old acquaintances would, and he said he was about to leave Vienna, and I asked him what he was going to do about the court-house contract, and he said, I am going to give that up; think he said he was going to get into some railroad business. It has been so long ago that I cannot give the details, but that is the substance. I mean by that I cannot repeat the exact language, it has been so long ago. This conversation was some time in the fall of 1869, as near as I can
337 remember, & at a hotel in Cairo called the Antrim House. Mr. Ham left Vienna, and I don't know of his whereabouts after that. I never saw him again till I met him in Cairo day before yesterday. I may have seen him after that conversation, but not to talk with him. He left this part of the country about that time. I don't know the exact time he left Vienna. I have no interest whatever in the result of this suit.

Cross-examination:

There were several persons present at this conversation; Capt. Willis was present, and I think Col. Billy Brown; we were sitting together in front of the hotel; it was in the evening; Mr. Ham was a guest at the Antrim House at that time; I was not clerk at the Antrim House; I was boarding there then; I was before that clerk at the Antrim House, but not at that time; I don't remember of ever seeing Mr. Ham there afterwards; I think that is the last time we ever met till day before yesterday; I was then clerk in the internal revenue collector's office; I quit clerking in the hotel about the middle of June, 1869; the weather was warm on this evening; I don't remember whether the trees had shed their leaves; I could not fix the date exactly when the conversation occurred;
338 as near as I can come at it it was in the fall of 1869; that is

my memory now; I could not say from the character of the weather that it was early in the fall; I only know the weather was pleasant and that there was a log in front of the house, and we were sitting probably with our feet on this log; I do not remember of anything particular going on that evening; I do not know where the hotel register is; the house has not been running for several years; Mr. Kelley was the proprietor & now resides at Duquoin; I could not give the order in which we were sitting, I think Mr. Ham was sitting next to me, but would not state positively that he was; I would not undertake to state positively where Mr. Brown & Mr. Willis or any of them sat with reference to each other; they all sat in chairs, I think in a row, though some of them might have been sitting on the log; I would not say positively whether they were sitting on chairs, logs, chunks, or what they were sitting on; they were all there, sitting on something; Col. Brown was working in the revenue office; we were working together, that is the way we happened to be there; we were all working together & were sitting out there smoking after supper; the supper hour was six o'clock; we did not always get there exactly at the hour; I did not know of Mr. Ham's boarding here in town at Mr. Petcher's
339 after that; Mr. Ham told me himself that he was interested in the court-house contract at Vienna; I have always regarded court-house contracts fat things, and I was somewhat astonished when he told me he had given up this contract; Mr. Ham told me some time during the same year of his interest in this contract; we had a good many conversations about business matters; when I first became acquainted with Mr. Ham he was working on the railroad; I think he said he had given up this contract, which left the impression on my mind that he had abandoned it.

I knew Joseph K. Frick well. I have heard he was interested in the court-house contract, but do not know anything of it.

1 question. Did not Mr. Ham state to you upon this occasion that he had come to Cairo to see Mr. Frick, and did you not tell him that he had gone?

Ans. I think Mr. Ham made such an inquiry, and that I made him such a reply.

2 question. Had not Mr. Frick previously told you that he had given up the contract for the building of the court-house at Vienna, and that Isaac N. Pearce had taken the contract?

(Question objected to by the defendants.)

Ans. No, sir; Mr. Frick never told me so; I don't know
340 that I ever had a conversation with Mr. Frick concerning the Johnson county court-house.

3 question. Will you state positively that you did not?

Ans. I will state positively that I don't remember that I ever had such a conversation.

4 question. Did you not, in your interview with Mr. Ham, state to him that you had heard that Frick had given up the contract for the building of the court-house, and that Isaac N. Pearce then had

it, and did not Mr. Ham then state to you that he was jointly interested with Mr. Pearce in the contract?

Ans. Not at that conversation. I may have had such a conversation with Mr. Ham prior to that; but being so well acquainted with Mr. Ham, being always a personal friend, and having an interest in his welfare, and hearing court-house contracts were such fat things, I was astonished to hear he had drawn out of this contract. At that time, when Mr. Ham told me he had given up the *the* contract, I may have got a wrong impression. The impression I got was that he had abandoned it. He may have got out of it some way other than abandoning it. I don't know how he did get out of it. He did not tell me how he did get out of it.

5 question. Was this conversation, in which he told you he had an interest in the contract, while you was clerk at the Antrim House?

341 Ans. It was while I was boarding there. I won't say whether it was while I was clerk or not. It was while I was stopping there.

6 question. What is there, if anything, that impresses upon your mind the time when this first conversation took place?

Ans. I don't know that there is anything, without it was the troubles with this Cairo & Vincennes road, in which Pearce was interested; and I think Mr. Ham was, too.

7 question. How do the troubles on the Vincennes road fix in your mind any time, and what was that time?

Ans. It was along about that time that they were having considerable trouble getting pay on their contracts. Mr. Pearce & Mr. Ham going into the Vienna court-house contract, I thought would bring them out all right. I could not fix any particular time any nearer than I have for the last conversation, as it was the last time I saw Mr. Ham when he told me he was going to quit Vienna, or had quit there.

8 question. Can you fix the time of this last conversation any nearer than some time between June, 1869, and August, 1870?

Ans. It was after August, and not later than early spring. It may possibly have been spring, but my impression is that it

342 was late in the autumn or fall.

9 question. Did Mr. Ham state to you the last time that you saw him, and when this conversation occurred, what his business in Cairo was at that time?

Ans. He told me he wanted to see Mr. Frick; that he was very anxious to see him.

10 question. Did he state to you in the same conversation for what purpose he wanted to see Mr. Frick?

Ans. Don't think he did. I have no recollection of it.

11 question. To refresh your recollection, did he not say that he wanted to see him concerning the Vienna court-house?

Ans. He might have said so, but I don't recollect that he did; don't know that he did.

12 question. Did not Mr. Ham state to you in this same conver-

sation that he had gone into this contract with the expectation of subletting the work?

Ans. Not at that conversation.

13 question. Now, Mr. Murphy, you say that the impression made upon your mind was that Mr. Ham had given up or abandoned the contract or work on the Vienna court-house; did he not say that he was not going to do the work himself, and from this did you not get your impression?

343 Ans. I got my impression from the fact that I thought Mr. Ham had abandoned what I thought was a good thing. He did not tell me that he was not going to do the work himself or was going to sublet it, as I now remember. The impression I got was that he was going to give it up entirely, and was making his arrangements to leave the country. In fact, he told me he had got a better thing. I think, at a prior conversation, he did tell me something about subletting the contract.

(Latter part of answer objected to by defendants.)

14 question. What, if anything, did he say was the "better thing" that he had?

Ans. I think he said it was something in connection with railroad building.

15 question. Who did he say was going to do the work on the court-house?

Ans. I don't know that he stated.

16 question. Did he say where he was going when he left here at that time?

Ans. No, sir; I don't think he did.

17 question. Was any one here with him at that time?

Ans. Not that I know of. Mr. Pearce may have been here. He was here with him several times. I was not so well acquainted with Mr. Pearce as I was with Mr. Ham.

18 question. Were you in Vienna during the year 1869?

Ans. No, sir.

344 19 question. Do you know whether Mr. Ham returned to Vienna after this conversation?

Ans. I do not.

20 question. You made an affidavit in this case that was filed for a rehearing before W. P. Bruner, did you not?

Ans. Yes, sir.

21 question. In that affidavit occur these words: "Affiant further states that the impression left upon his mind by the said conversation was that the said Ham had either sold out his interest in the court-house contract, or that he had abandoned it entirely." Was that correct?

Ans. Yes, sir; my impression was that he had gotten out of it entirely; whether he had sold out, or how he had gotten out, I do not know, but that he had gotten out entirely was my impression. I do not say that he had gotten out entirely; that I don't know, but that was my impression at the time.

22 question. Was this conversation carried on between you and Ham solely?

Ans. Part of the time. Before the conclusion it become a general conversation among the party that was sitting there. The party was composed of Mr. Willis, Mr. Brown, Mr. Ham, & myself, and there may have been others sitting around there.

23 question. Who did you first mention the fact to that you
345 had had this conversation with Mr. Ham, & when?

Ans. It was in the revenue office at Metropolis; Capt. Willis asked me if I remembered the conversation we had had with Mr. Ham at the Antrim House; it was last winter some time—the fore part of the winter, I think; I think I had remarked several times that there must be more money in railroad jobs than I had supposed there was in court-house contracts, for a friend of mine had given up the Johnson county court-house contract for a railroad job; I received a postal-card from Major Kuykendall asking me if I remembered a conversation I had had with Mr. Ham about that contract, & while I was reading it Col. Willis come in and asked me the question; Capt. Willis told me he had mentioned to Maj. Kuykendall that I had had the conversation & that he was present.

WILLIAM M. MURPHY.

Testimony of J. C. Willis.

The said JONATHAN C. WILLIS, being first duly sworn by me to testify the truth, the whole truth, and nothing but the truth, deposes as follows, viz:

My name is Jonathan C. Willis; my age is fifty years; I
346 reside in Metropolis, Illinois; I am collector of internal revenue; I have know Maj. Kuykendall for some thirty odd years, and Mr. Pearce for some twenty odd years; I first met Mr. Ham, I think, in the year 1869.

1 question. If you ever had any conversation with the complainant Ham, or if he had a conversation with others in your presence and hearing, in relation to his contract for the building of the court-house in Vienna, Illinois, state when and where it was, who was present, and all that he said, as near as you can remember it?

Answer. In the latter part of the summer of 1869 or the fall; I think September; I can't say positively, at the Antrim House, which is now the Bulletin office down here; I came out one evening from supper; in front of the building on the pavement, Mr. Ham, Mr. Murphy, and other gentlemen, I can't say who, but there were others there, Mr. Ham and Mr. Murphy being engaged in a conversation in relation to the building of the court-house at Vienna; after listening to the conversation some time, which I can't now repeat, I engaged in the conversation myself, & during the conversation Mr. Ham remarked that he had abandoned the building of the court-house at Vienna; Mr. Pearce would complete the contract, & he could make more money by contracting on railroads than by building the court-house; and there was something said by
347 Mr. Ham in relation to the bonds, about getting his pay, but

the conversation I can't state now; the substance of what he said was that there would be difficulty about the issuing of the bonds and about his getting pay for the house; I saw Mr. Ham for a few days a day or two after that conversation, but after that I never saw him again till to-day; for probably a year before that I had met him frequently; I had met him here and at Vienna; at the time we had that conversation we were boarding at the same hotel; there was also something said about contracting with some railroad in Ohio; the substance was that he had already contracted, or was going to contract, with some railroad in Ohio.

J. C. WILLIS.

UNITED STATES OF AMERICA, } ss:
Southern District of Illinois, }

I, H. H. Candee, a United States commissioner in and for said southern district of Illinois, do hereby certify that previous to the examination of the said William M. Murphy and Jonathan C. Willis, in pursuance of the annexed notice as witnesses in the said suit between the said Charles I. Ham, complainant, and the said Andrew J. Kuykendall and Isaac N. Pearce, defendants, they were
348 each duly sworn respectively by me to testify the truth, the whole truth, and nothing but the truth. That said depositions were taken on the 15th day of February, A. D. 1877, at the office of the internal revenue collector, in the custom-house, in the city of Cairo, Alexander county, Illinois. That after said depositions were taken by me as aforesaid, they were read over to said witnesses respectively, and thereupon signed and sworn to be them respectively.

Witness my hand and official seal at Cairo, Illinois, this 15th day of February, A. D. 1877.

[L. S.]

H. H. CANDEE,
U. S. Commissioner Southern District of Illinois.

(Indorsed:) Filed September 14, '81. J. A. Jones, clerk.

349 Then afterwards, to wit, on Wednesday, the 14th day of September, at the June term of said court, in the year of our Lord one thousand eight hundred and eighty-one, the following further proceedings were had in said court, in said cause, and entered of record, to wit:

Final Decree.

CHARLES I. HAM
vs.
ISAAC N. PIERCE and ANDREW J. KUYKENDALL. } 3852. In Chancery.

And now on this 14th day of September, 1881, come again the parties, by their counsel, and submit this cause to the court under the order entered on the first day of January, 1877, granting a rehearing of the decree entered therein on the 3d day of January, 1876; and the court having heard the proofs and allegations of the parties, embracing as well the proof taken prior to the 3d day of January, 1876, as of the proof taken in the case since the 1st day of

January, 1877, and being sufficiently advised in the premises,
350 doth order and decree, that the defendants pay to the complainant the sum of five thousand and one dollars ($5,001.00), and that he have execution for the recovery thereof, as upon a judgment at law. And the court doth further order and decree that the parties pay the costs, respectively, made by them, no docket fee to be taxed.

And afterwards, to wit, on Thursday, the 22d day of September, at the term and in the year last aforesaid, the following further proceedings were had in said court, in said cause, and entered of record, to wit:

Order Allowing Appeal.

CHARLES I. HAM
vs.
ISAAC N. PIERCE and ANDREW J. KUYKENDALL. } 3852. In Chancery.

And now on this 22d day of September, 1881, come again
351 the parties, by their counsel, and on motion of the defendants an appeal to the Supreme Court of the United States is allowed on said defendants or either of them entering into bond to the complainant in the penalty of seven thousand dollars, conditioned as the law directs, to be approved by the court, within sixty days from the rendition of the decree, and such appeal to operate as a supersedeas.

Whereupon, on the 30th day of September, in the year last aforesaid, came the defendant, A. J. Kuykendall, and filed in said clerk's office his appeal bond in said cause, which said appeal bond is in the words and figures following, to wit:

Appeal Bond.

Circuit Court of the United States, Southern District of Illinois.

CHARLES I. HAM
vs.
352 ISAAC N. PIERCE and ANDREW J. KUYKENDALL.

Know all men by these presents, that we, Andrew J. Kuykendall, as principal, and Joseph B. Kuykendall, James H. Carter, and Josiah Throgmorton, as sureties, are held and firmly bound unto Charles I. Ham in the sum of seven thousand dollars, to be paid to the said Charles I. Ham, his executors or administrators, to which payment, well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our and each of our heirs, executors and administrators, firmly by these presents.

Sealed with our seals, and dated this 28th day of September, A. D. 1881.

Whereas the above-named defendants have prayed an appeal to the Supreme Court of the United States to reverse the decree in the above-entitled suit, rendered by the circuit court of the United States for the southern district of Illinois:

Now, therefore, the condition of this obligation is such, that
353 if the said Isaac N. Pierce & Andrew J. Kuykendall shall prosecute their said appeal to effect and answer all damages and costs, if they shall fail to make good their plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

ANDREW J. KUYKENDALL. [SEAL.]
JOSEPH B. KUYKENDALL. [SEAL.]
JAMES H. CARTER. [SEAL.]
JOSIAH THROGMORTON. [SEAL.]

Sealed and delivered in the presence of—
F. M. JONES.
B. S. GRAY.

Circuit Court of the United States, Southern District of Illinois.

CHARLES I. HAM
vs.
ISAAC N. PIERCE and ANDREW J. KUYKENDALL. } No. 3852.

STATE OF ILLINOIS,
Johnson County, } ss:

354 I, F. M. Jones, clerk of the county court in and for the county of Johnson and State aforesaid, do hereby certify that the bond of Andrew J. Kuykendall, with the securities thereto, are worth at least four times the amount of said bond over and above all liabilities.

Given under my hand and official seal, at Vienna, this the 28th day of September, A. D. 1881.

[L. S.] F. M. JONES, *Clerk.*

Approved Sept. 30th, 1881.

S. H. TREAT,
Dist. Judge.

(Endorsed:) Filed September 30, 1881. J. A. Jones, clerk.

355 *Clerk's Certificate.*

UNITED STATES OF AMERICA,
Southern District of Illinois, } ss:

In the Circuit Court.

I, John A. Jones, clerk of the circuit court of the United States within and for the southern district of Illinois, do hereby certify the foregoing to be a true, perfect, and complete copy of the papers filed and the proceedings thereon had in a certain cause lately pending in said court, wherein Charles I. Ham was complainant and Isaac N. Pearce and Andrew J. Kuykendall were defendants, as fully as the same now appear on file and of record in my office.

In testimony whereof, I have hereunto set my hand and affixed

the seal of said court, at my office, in the city of Springfield, in said district, this 29th day of October, in the year of our Lord one thousand eight hundred and eighty-one, and of the Independence of the United States the one hundred and sixth year.

[SEAL.] J. A. JONES, *Clerk.*

Endorsed on cover: S. Illinois C. C. U. S. No. 153. Isaac N. Pearce and Andrew J. Kuykendall, appellants, *vs.* Charles I. Ham. Filed November 9, 1881.

Office Supreme Court U. S.
FILED.
DEC 13 1884
JAMES H. McKENNEY.
CLERK

113-585

IN THE

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1884.

No. 153.

ISAAC N. PEARCE AND ANDREW J. KUYKENDALL,
Appellants,

vs.

CHARLES I. HAM,
Appellee.

Statement of the Case, and Brief and Argument of
JOHN M. PALMER,
for Appellants.

IN THE

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1884.

No. 153.

ISAAC N. PEARCE AND ANDREW J. KUYKENDALL,
Appellants,

vs.

CHARLES I. HAM,
Appellee.

Appeal from the Circuit Court of United States for the Southern District of Illinois.

STATEMENT OF THE CASE.

Charles I Ham, the Appellée, exhibited his bill in equity in the Circuit Court of the United States, for the Southern District of Illinois, against the Appellants, Isaac N. Pearce and Andrew J. Kuykendall, charging in substance. That on the 5th day of August, 1868, one Joseph K. Frick entered into a contract with the County Court of Johnson County, in the State of Illinois, for the erection of a Court House at Vienna, the county seat of the county, according to the terms of a written contract filed as an exhibit with the bill. That afterwards, on the 9th day of September, 1869, Frick, with the consent of the county court, assigned his contract to the complainant and the appellant, Pearce; and it is claimed that by the assignment the complainant and Pearce became entitled

to all the rights and privileges of Frick, and were to be equal partners in the enterprise, to share equally the losses and profits.

It is further stated, that after the assignment the firm of Ham & Pearce proceeded toward the erection of the Court House as contemplated by the contract, and expended about one thousand dollars, when they sub-let the work to one Niles L. Wickwire, a responsible builder, and employed the said Wickwire to erect and complete the Court House according to the terms of the original contract, for the sum of twenty-seven thousand five hundred dollars, in Johnson county bonds, which would leave to Ham & Pearce a profit of ten thousond eight hundred and fifty-seven dollars. The date of this arrangement is alleged to be November 15, 1869.

It is further charged that Wickwire completed the Court House according to the contract, and was fully paid for doing so according to his contract with Ham & Pearce, and that there was left of the price to be paid by Johnson county, ten thousand eight hundred and fifty-seven dollars, one-half of which the complainant Ham insists, belongs to him.

The bill then charges that when Frick entered into his contract with the county for building the Court House, the defendant Kuykendall became the security of Frick upon a bond conditioned for the faithful performance of the contract; and to enable Kuykendall to protect himself, Frick appointed Kuykendall his attorney in fact, and

acting as such attorney, he made the assignment of Frick's contract to Ham & Pearce, and generally acted in his behalf, said Frick being a non-resident of the State of Illinois, and that he afterwards, under some arrangement with Pearce, received the county bonds from Johnson county and divided them with Pearce, to the prejudice of the complainant, Ham.

After other averments not material to an understanding of the case, the bill prays an account of the bonds received by Pearce and Kuykendall, and a decree in complainant's favor, for one-half the amount received over the amount paid to Wickwire for building the Court House.

The exhibit filed with the bill is a contract made on August 5, 1868, between Joseph K. Frick, of the one part, and Jason B. Smith, County Judge and James Hogg and Mark Whitaker, Associate Justices of the County Court of Johnson County, by which Frick, in consideration of certain payments, to be thereafter made, binds himself to build and complete a Court House according to certain plans and specifications, to be completed ready for delivery on the first Monday of September, 1870. The consideration provided by the contract is the sum of $38,350, to be paid as follows:

$9,589.25 in Johnson County bonds, bearing ten per cent. interest, due in six years, to be paid at the execution of the contract.

Nine thousand five hundred and eighty-nine dollars and twenty-five cents in similar bonds to be paid when

the work is half done; $9,589.25 in similar bonds, or money, at the option of the county, when the work is "three-fourths done," and $9,589.25 in lawful money or similar bonds, or a part in each, at the option of the county, when the work should be completed. It was provided that in all cases, except that of the first payment, the contractor before having a right to demand other payments, should produce the certificate of the superintendent appointed in the contract.

The exhibit also includes a bond made by Joseph K. Frick, and the defendant, Andrew J. Kuykendall, payable to the before mentioned members of the county court of Johnson county, in the penal sum of twenty thousand dollars, subject to the following condition, in substance:

"Whereas, the above bounden, Joseph K. Frick, has entered into a contract this day with the party of the second part, to build in the town of Vienna * * * a court house for said county of Johnson, * * * to be built and completed according to the terms of said contract, the specifications of which are this day filed. * * * By which contract and specifications the above bounden, Joseph K. Frick, is to fully finish and complete said court house on or before the first Monday in September, 1870; and the said parties of the second part agree to pay to said Joseph K. Frick "the contract price or sum for the building of said court house, the sum of thirty-eight thousand three hundred and fifty-seven dollars, one-fourth of said contract price payable in advance, one-

fourth when the work is half completed, one-fourth when the work is three-fourths completed, and the remainder when said court house is fully completed.

Now, the condition of the above obligation is such, that if the said Joseph K. Frick shall, as soon as may be, and within a reasonable time, commence the building and construction of said court house, and shall with all diligence and reasonable expedition, proceed with the work according to the terms and conditions of said contract, and shall, in due time, according to the spirit, intention and terms of said court house contract, shall finish the same within the time limited for the completion thereof, * * then the above obligation to be null and void."

The specifications, which are not important to an understanding of the case, form part of the exhibit, and the assignment of Frick's contract to Ham & Pearce, which is in substance as follows, is exhibit "B":

"Know all men by these Presents, That I. Joseph K. Frick, by A. J. Kuykendall, my attorney, in consideration of the sum of one dollar, to me in hand paid by Charles I. Ham and Isaac N. Pearce, under the firm name of Ham & Pearce, do hereby assign to the said Ham & Pearce and their assigns, all my interest in the above entitled contract, between Joseph K. Frick the party of the first part, and the County Court of Johnson County, Illinois, party of the second part, and every clause, article, right or privilege therein contained; and the party of the first part further covenants and agrees, to pay over to said Ham &

Pearce the sum of nine thousand five hundred dollars in lawful money, or Johnson County bonds, bearing date December 1st, 1868.

(Signed) JOSEPH K. FRICK.

By A. J. KUYKENDALL, his Attorney."

Pearce answered the bill, admitting that Frick made the contract with the county as charged, but denies that the contract was assigned to himself and Ham, with the consent or approval of the County Court, or that the county ever recognized such assignment.

He further answers that when the assignment was made to Ham and himself Ham was idle and pecuniarily embarrassed by the suspension of work on the Cairo & Vincennes Railroad, but represented himself to Pearce to be a practical mechanic and builder. That Pearce was himself then a merchant, without knowledge or experience as a builder, but was induced to form a partnership with Ham, with the expectation that by uniting the advantage of paying for material and labor going into the construction of the proposed Court House, with merchandise, with the mechanical skill and experience, and personal supervision of the work by Ham, as it progressed, a profit could be realized.

That after taking the assignment, he proceeded to collect materials and have some excavating done preparatory to the erection of the Court House, at a cost of about $523.87, all of which was paid for by him out of his pri-

vate means; Ham having never contributed one cent, nor done one hour's labor towards the building.

He further answers,-that about November 15, 1869, he and Ham sub-let the contract to Wickwire to completethe Court House according to Frick's contract for the sum of $27,500 in Johnson County bonds; but that Ham and himself agreed to advance Wickwire $5000, in money, to enable him to commence work under his contract, and that he might proceed to make arrangements for materials for the erection of the Court House.

That soon after, but about the time of the making of the contract with Wickwire, Ham went away from that part of Illinois, and never returned till long after the Court House was completed and accepted.

He says further, that soon after the contract with Wickwire was made, Wickwire visited Vienna to obtain the $5000 which had been promised him. That Ham was then absent, and his whereabouts unknown to Pearce, although Ham had promised to see to raising or providing the $5000 for Wickwire.

Pearce was then greatly embarassed as to what to do, and begged time of Wickwire, endeavored to raise the money, and communicate with Ham, but was unable to do either.

That sometime in March, 1870, Wickwire refused to go on with the contract, unless the advance of $5,000 was paid him, and being unable to raise the money, or to hear from Ham, he was compelled to, and did rescind the con-

tract made by Ham and himself with Wickwire, for the completion of the Court House.

In this he denies all fraudulent or improper motives, but insists that if Ham had been what he professed to be, a practical mechanic and builder, and had remained and done his duty in the premises, money could have been made out of the contract. He had no experience as a builder and but little means, and he honestly rescinded the contract and surrendered the written memorandum thereof to Kuykendall for destruction, and this terminated Pearce's connection with the matter as the partner of Ham.

THE DEFENDANT KUYKENDALL ANSWERED

admitting the contract between the County Court of Johnson County and Joseph K. Frick for the building of the Court House, and the assignment of this contract by Frick to Ham & Pearce; but denies that such assignment was made with the consent or approval of the County Court, and denies that the County Court ever in any manner recognized the assignment, but on the contrary, the County Court always insisted upon its contract with Frick, and upon the bond for $20,000, on which he was security.

He admits that after the assignment of the contract to Ham & Pearce, work was done under the supervision of Pearce, towards the construction of the Court House to the value of $523.87, but that Ham did no work, and expended no money whatever.

He admits that he has been informed, and believes,

that about the 15th of November, 1869, Ham & Pearce sub-let the job of building the Court House to Wickwire, as alleged in the bill, for the sum of $27,500 in Johnson County bonds; but charges that that they furthermore agreed with Wickwire to advance him $5,000 in money, before he commenced the work.

He further answers, that about that time, Ham, being pecuniarily embarrassed, left that portion of the state, permanently, and did not return until long after the Court House was completed. That in February or March, 1870, Wickwire made one or two trips from Cairo, Illinois, where he resided, to Vienna, to get the $5,000 promised him, in order to enable him to commence the work; but that Ham was absent, and Pearce did not have the money to advance, whereupon Wickwire told Pearce, and others, that he would do nothing under his contract, until the money was furnished him.

He further says, that being responsible on his bond before mentioned, as security for Frick, in the sum of $20,000, and knowing that Ham and Pearce had failed to furnish the $5,000 which was necessary to secure the performance of Wickwire's contract, he called upon Pearce, Ham being absent, and his residence unknown, for a rescission of the assignment of Frick's contract.

He then made a contract with Wickwire for the completion of the Court House for the sum of $27,500 in Johnson County bonds; binding himself, however, to cash them at ninety cents on the dollar.

He denies all knowledge or belief that Pearce acted fraudulently; but charges that Pearce was unable to raise the $5,000 promised to Wickwire. He denies all fraud upon his own part, but says that he was anxious that Ham & Pearce should complete the Court House according to the original contract. That as the agent and security of Frick, after the assignment by him to Ham & Pearce was rescinded and abandoned, he caused the Court House to be completed according to the contract, and received from the county of Johnson the contract price.

That, in order to keep his contract with Wickwire, he was compelled to sell much the larger portion of the bonds at eighty cents on the dollar, though by his contract, he paid Wickwire ninety cents.

He allowed Pearce no share of the profits, though he employed him to assist in negotiating some of the bonds. He paid Pearce for his services, and repaid him $523.87, the amount of work done and materials furnished by him towards the building of the court house.

Replications were filed and proofs taken. The cause was then heard, and a decree rendered for the complainant, Ham, against both of the defendants for five thousand and one dollars ($5,001) and costs.

The defendants appeal to this court, assigning error as follows:

The court below erred in the finding for the com-

plainants, upon the law and evidence, and in not dismissing complainant's bill.

The decree being for the payment of money only, a more specific statement of the error therein is not possible.

BRIEF AND ARGUMENT

OF JOHN M. PALMER COUNSEL FOR APPELLANTS.

The facts controverted by the parties are few, but decisive. There is no dispute between them upon the following points:

1. Joseph K. Frick made a contract with the county court of Johnson County, Illinois, for the building of a Court House. The contract was in writing and embraces the plans and specifications of the proposed building, expresses the time for its completion, and the amount, and manner of the payments to be made to the contractor.

2. The defendant, Kuykendall, became bound as security for Frick to the County in the penal sum of $20,000.

3. Frick afterwards, by Kuykendall, attorney in fact, assigned his contract to Ham & Pearce.

4. Ham & Pearce did some work on the proposed building, and then contracted with Niles L. Wickwire to complete the Court House for $27,500, payable in Johnson County bonds.

5. Wickwire did, in fact, complete the Court House in the time and manner required by the original contract between Frick and the county court.

6. The defendant, Kuykendall, did, in fact, receive from the county of Johnson the bonds which were to be paid for the building of the Court House, and paid Wickwire for constructing the same. He also paid all other expenses connected with the work, and negotiated the county bonds and by other means raised all the money required.

The appellee claims, in addition, by inference at least, that upon the execution of the assignment of Frick's contract with the county, to Ham & Pearce, the county court approved the assignment; and that the legal effect of such approval by the county court, was the discharge of Frick and Kuykendall as contractor with the county, and security for the contractor respectively, and the acceptance of Ham & Pearce as contractors.

The appellants deny the approval by the County Court of the assignment by Frick, to Ham & Pearce, and deny that by the assignment or other means, Frick and Kuykendall were discharged from their liability on the contract.

This point is so important to a proper determination of the rights of the parties, that the evidence bearing upon it will be here considered.

There was an actual assignment of the contract by Frick, to Ham & Pearce. Printed Record, p. 20. The

assignment was placed upon the records of the County Court, but it was done in vacation and without the authority of the court. Printed Record, page 121.

Kuykendall, then representing Frick as principal, and himself as security of Frick for the faithful performance of the contract, owed a duty to Frick to protect him, and had a right to protect himself, notwithstanding the assignment of the contract to Ham & Pearce.

Waiving the discussion of all other questions for the present, it is certain that as late as March 1, 1870, nothing had been done towards the erection of the court house, except the small amount of work done by Pearce in the autumn of 1869. See Deposition of Kuykendall, Printed Record, page 59.

It is true that Ham & Pearce had by a contract dated December 8, 1869, sub-let the work to Wickwire; but it is equally true that, without the fault of Kuykendall, nothing substantial had been done, and Wickwire had declined to proceed with the contract. Printed Record, page 58, et seq.

Wickwire says that Ham guaranteed 90 cents on the dollar for the bonds; he also agreed to assist Wickwire in "placing the bonds," and promised to be on the ground most of the time, and lend assistance as much as he could, in building the court house. It was agreed by Ham and Wickwire that they should meet at Vienna about New Year, in regard to commencing the work. Printed Record, page 33.

Ham made other promises to Wickwire, such promises are not embraced in the written contract, but they are admissible as evidence, and are material to show the circumstances under which all parties acted. See Printed Record page 34, et seq.

Ham had disappointed the expectations he had excited in the minds of Pearce and Wickwire, he was supposed to be insolvent, he disappeared soon after the contract with Wickwire was made, and did not return until after the Court House was completed. Pearce, before February, 1870, had written to Ham and could get no answer. For reasons given by Wickwire to Pearce, he declined to go on with the work. Printed Record, page 67.

About March 1, 1870, Kuykendall applied to Pearce for information as to the intention of Ham and himself, as to going on with the work; he was told by Pearce in substance, that he could hear nothing from Ham, and that he was unable to go on himself. He then asked Kuykendall to take the job off their hands, upon terms which he mentioned. Kuykendall accepted the offer upon terms stated by Pearce. Printed Record page 67.

Kuykendall then went to Cairo and made a contract with Wickwire for the completion of the building, which contract was afterwards satisfied. On these points Pearce, Kuykendall, and Wickwire agree.

If their testimony is to be believed, then it is clear that Kuykendall had a right to assume that Ham & Pearce had abandoned the rights which they had acquired

by the assignment of Frick's contract. He was justified in this conclusion by the conduct of Ham, and he could have no remaining reason to doubt such abandonment, after his interview with Pearce, to which Kuykendall and Pearce both testified.

It is difficult to imagine what other course was open to Kuykendall, on March 1, 1870, under the facts as they actually existed and appeared, than that which he adopted. He was bound under a large penalty that the work upon the Court House should be *commenced within a reasonable time* "after the date of Frick's contract, August 5, 1868; that the work should be proceeded upon, "with all diligence and reasonable expedition;" and that the work should be completed by the first Monday of September, 1870, the then current year.

Let it be borne in mind that Wickwire had then, already declined to proceed with his contract with Ham & Pearce to complete the Court House. It may be, as Ham intimates, that when he left Johnson County, he supposed he had made such arrangements with Wickwire and Pearce, as would insure the completion of the Court House; but however that may be, it is certain, from the testimony of both Wickwire and Pearce, that they did not so understand matters, and it is also certain that when Kuykendall intervened, both Wickwire and Pearce had abandoned all intention of proceeding to the completion of the Court House.

Ham confesses, that when he left the neighborhood,

his only dependence for the execution of the contract, was upon Wickwire and Pearce. That dependence failed, and Kuykendall was not only at liberty, but was bound to act upon the facts as they appeared at the time; and he did so by the express consent of Pearce, who was Ham's partner, and who was presumed to know his ability and intentions better than any other person.

When Kuykendall intervened, three-fourths of the bonds of Johnson County, which constituted the fund applicable to the cost of building the house, were unissued.

Wickwire says, Printed Record page 35. "Mr. Pearce and Mr. Kuykendall came to Cairo to see me, and Mr. Kuykendall stated to me that he was security in some way that the house should be built, and asked me if I would go ahead and carry out the contract, if he would become responsible and furnish the money. I told him I would."

When asked whether, when he made this arrangement with Kuykendall, he did not consider the contract with Ham & Pearce abandoned, or at an end, he answered, "I don't know that I thought anything about that. I had confidence in Mr. Kuykendall, that he would carry out what he agreed to. * * * All I wanted was some one that was responsible to deal with." He adds further, in substance, that he would not have gone on without the arrangement with Kuykendall.

If the positions we have urged are supported by the facts, we suppose they are decisive of the case. We repeat

them: 1. Kuykendall remained liable as security for the completion of the contract made by Frick for the erection of the Court House, notwithstanding the assignment to Ham & Pearce.

In order to put that point at rest, we add that there is no evidence that the County Court of Johnson County accepted Ham & Pearce as parties to the contract instead of, and in discharge of Frick and Kuykendall. If the assignment had been placed upon the records, by order of the county court, such order limited to the recording of the assignment, would not in legal effect have discharged Frick and Kuykendall. John Oliver, whose testimony will be found in Printed Record, page 119, says he was County Judge of Johnson County from the fall of 1869, to the month of February, 1871, during the building of the Court House in Vienna; and the court, during that time, recognized Kuykendall as the security of Frick, and never did recognize the assignment of Frick's contract to Ham & Pearce.

The law is well settled, in Illinois, that a county court can only bind the county when sitting as a court for the transaction of county business, and by orders then made and entered of record; so it is only from such acts, or from the acts of its authorized agents, that any implication can be made, binding it in law.

McHaney v. County of Marion, 77 Ill. 488.

Bouton v. McDonough County, 84 Ill. 384.

2. Ham and Pearce had abandoned the contract, or

what is the same thing, in effect, Kuykendall was justified in believing, and did believe that they had done so, and acted upon that belief when he entered into the contract with Wickwire.

In order to charge Kuykendall as trustee for Ham, with reference to the proceeds of the county bonds, over and above the amount expended for the completion of the Court House, it must appear that he either intentionally represented him in his transactions, or, that his conduct was such in reference to the construction of the Court House, and the receipt and disposition of the county bonds, that a court of equity will, in disregard of his intentions, charge him as trustee. The bill proceeds upon the latter theory, which may be familiarly expressed in the sentence, "He ought in good conscience account to Ham the complainant, for one-half the net profits derived from the execution of the contract."

We do not contest the right of a court of equity in a proper case, to apply and enforce the rule above adverted to; and we have attempted, in advance of this concession, to show that the facts do not bring this case within the rule, and we proceed in the further discussion of the facts, with distinct reference to the rule as we state it.

If Ham & Pearce had before the time of the intervention of Kuykendall, distinctly declared to him that they would not, or could not proceed to execute the contract which Frick had made with Johnson County, the case would be free from difficulty. They were not under any

direct legal obligation to the county to proceed; their liability under the contract of assignment was to Frick and to Kuykendall, who was Frick's agent in form, but who was in fact the security of Frick, for the faithful execution of the contract, and who, after the assignment, was the security of Ham & Pearce.

In the case supposed, after distinct notice from Ham & Pearce of their intention not to execute the contract, the right of Kuykendall representing Frick and himself, to declare a recission of the assignment, and proceed to the execution of the contract himself, would not be open to question. A distinct refusal on their part, to proceed to execute the contract assigned to them, would have amounted to a renunciation of all the rights acquired by them under the assignment, and they could afterwards claim nothing.

We use the expression, "a distinct refusal" on the part of the assignees of the contract, to execute it, only to make ourselves clearly understood; for acts which amount to a failure or refusal, or which Kuykendall, under all the circumstances of the case, had a right to treat as a refusal or failure to execute the contract, would have the legal effect of a distinct refusal.

The actual facts, as they existed on March 1, 1870 we have already mentioned. They are, 1. Ham was understood to be insolvent. 2. He had left Johnson county, his residence was unknown, and he could not be reached by letter. 3. His partner, Pearce, was unable to hear from

him. 4. Wickwire, with whom Ham & Pearce had made a contract for the completion of the house, had declined to proceed. 5. Pearce, the partner of Ham, when called upon for information, declared himself unable to proceed, and expressed a wish to Kuykendall, whose liability to the county was recognized, that he would take the contract off their hands. 6. He did so, influenced by a desire to protect himself.

The answer to this attempted by the appellee is, that there was collusion between Pearce and Kuykendall to deprive Ham of his share of the supposed profits of the contract; which imputation assumes it to be true that Wickwire would have completed the Court House precisely as he did, if Kuykendall had not intervened.

This assumption is contradicted by the testimony of Wickwire, who says he would not have done so.

It is also assumed by appellee that Pearce, one of the partners, ought to have done all that was necessary in order to secure the execution of the contract by Wickwire, as he had a large amount of Johnson county bonds in his hands.

Representing Kuykendall, alone, we do not feel called upon to discuss the relative duties of Ham & Pearce to each other as partners. The evidence does not show any collusion between Pearce and Kuykendall; it shows the utmost good faith on Kuykendall's part.

It is not enough to warrant conclusions unfavorable to Kuykendall, that he accepted Pearce's admission of the

inability of the partners to execute the contract assigned to them by Frick; nor that he used the agency of Pearce in the prosecution of the work, after he undertook it.

He did not advise Pearce to abandon the enterprise, nor did he improperly accept such abandonment.

This much may be said for Pearce; he could promise himself nothing from the intervention of Kuykendall, for his interest in the contract even upon appellant's own showing, would be the same. And it may be further said for Pearce that the conduct of Ham was of a character to discourage him. Ham himself says, (Printed Record, page 52) that he left Cairo at 3 o'clock on the morning after the contract between himself and Pearce with Wickwire was signed, and told Pearce that he expected to return about March 1st. He says that he told Wickwire that he would probably be in Vienna and see him every day; and that if there, he would render him all the assistance in his power in regard to the building and the negotiation of the bonds. He admits the receipt of a letter from Wickwire, which he professes to have answered, but which Wickwire, in effect, denies. He admits the receipt of letters from Pearce, which he does not profess to have answered. One of Pearce's letters was so important that he cannot excuse his failure to answer it. It is the letter in which Pearce informed him that "Mr Wickwire had turned up at Vienna; that he, Wickwire, talked rather discouragingly about going to work. That Wickwire had gone down to Cairo and did not say when he was

coming back again." He adds that he afterwards received a letter from Pearce, in which Pearce told him that he was going down to Cairo and take Mr. Kuykendall with him.

These letters afford convincing proof of the good faith of Pearce, and of the utter neglect by Ham, of all his promises made to Pearce, as well as Wickwire.

He admits more than this, for he says (Printed Record, page 53): "Mr. Pearce received the bonds and money, as he was to attend to the financial part of the contract, and I was to attend to the mechanical;" and yet, in point of fact, though notified by Pearce of his difficulties, and Wickwire's reluctance and probable refusal to proceed, he neither wrote nor returned to look after the matter in any way whatever.

By his own testimony, he establishes the fact beyond reasonable controversy, that he neglected his own obligations and duties, after notice of the difficulties which his absence occasioned. He uttered no word of encouragement to his partner, he rendered him no assistance; "he made no sign" indicating an interest in the matter, until Kuykendall, at the request of Pearce, had accepted the surrender of the assignment, pledged his own credit, secured the completion of the Court House, and, in full reliance upon the belief inspired by the silence and indifference of Ham, that he had abandoned all interest in the matter, settled up with Wickwire and Pearce.

Ham says: "After I left Vienna in the fall of 1869, I

spent no time nor money about the Court House until after it was completed." Printed Record, page 55.

The evidence shows that he was notified of two facts which he was not at liberty to disregard, and this notice was given to him by Pearce, his partner. One of them was, that the contract with Wickwire had failed to accomplish what was expected—the building of the Court House; and the other was, that Kuykendall had been called upon to interfere in the matter.

As little as we can claim, in view of these facts is, that by his silence, Ham referred the whole matter to the discretion of Pearce, and bound himself to abide by his action; otherwise his silence can only be attributed to an intention to lie in wait for Pearce, and for all other persons with whom Pearce might contract, or call to his assistance.

There is evidence in the record upon minor points, such as the value of the services rendered by Kuykendall in negotiating the bonds, the price at which he sold the bonds, etc., which can only be important if he is to be adjudged trustee for Ham. We will not discuss the case in that aspect, for there is nothing in the facts of the case, nor in the legal or equitable rules applicable to the facts, to justify the conclusion that Kuykendall is under any legal, or moral obligation to account to Ham for any of the proceeds of the bonds, paid over to him by the county.

We think after a careful review of all the evidence, the appellant Pearce, may with justice, complain that he should be adjudged guilty of betraying the interests of his

partner, and of fraudulent collusion with a stranger to deprive that partner of his fair share of the profits of a common enterprise.

In answer to such charges, he appeals to the fact that he had no motive for so doing, for the appellee, while he charges Pearce with fraud, concedes that he made, and could make no profit by it.

Pearce further appeals to all the other facts; which show the insolvency of Ham, his neglect to give his personal attention to the construction of the Court House, his unexplained absence; his neglect to answer Pearce's letters, in which he explained his embarrassment, and in effect invoked Ham's assistance. He appeals to his own want of mechanical knowledge, which Ham admits, and to the limited character of his financial resources, which is not denied. He points to the refusal of Wickwire to proceed under the contract of Dec. 8, 1869, and pledges his own oath, that in all he did, he acted in good faith, and submitted to necessities imposed upon him by the conduct of the appellant.

The appellant, Kuykendall, may with equal justice complain, that he should be adjudged guilty of collusion with Pearce to the injury of the appellee, and with persistent adherence in a fraudulent attempt to deprive the appellee of his share of the profits of the Court House enterprise. In answer to such charges he appeals to the fact that he was security of Frick, in a large sum of money, for the faithful execution of the contract with the

county; and that, relying upon his responsibility, the county paid over to him one-fourth of the contract price for the Court House, when the contract was signed. That afterwards, about the 9th day of September, 1869, when nearly a whole year remained within which to complete the contract, relying upon the ability of Ham & Pearce to do the work, he assigned the contract to them, and paid over to them the whole amount of bonds received by him from the county. That when the 1st day of March, 1870, arrived, and nothing substantial had been done towards the erection of the Court House, and but little time remained for its completion, being under obligations to the county, both on account of his bond, and and the receipt of $9,500 in bonds which he had received and advanced to Ham & Pearce on account of the contract, he called upon Pearce for information as to the prospects for the completion of the work.

He learned from Pearce his embarrassments on account of the absence of Ham, and of his inability to hear from him; to which may be added his own knowledge of Ham's want of means. He also learned from Pearce his own financial condition, and Wickwire's refusal to carry out the contract.

He accepted the offer which Pearce, in his extremity, made him, that the assignment should be rescinded, and that he himself should complete the contract, if possible.

That the time for doing so was short, is apparent from the fact that Wickwire's contract with Ham &

Pearce, to finish the Court House by November 1, 1870, two months later than was provided in the original contract.

That he should resort to Wickwire, who was a responsible, competent builder, and who had refused to go on with his contract with Ham and Pearce, solely because they, and especially because Ham himself, had failed in his promises, was natural. That Wickwire should accept his responsibility and agree to go and complete the Court House upon terms identical with those expressed in his contract of December 8, 1869, is not surprising, for Kuykendall furnished to Wickwire, that which Ham and Pearce could not, or would not furnish, personal responsibility,

He employed Pearce to assist him, which did no harm to the appellee. He finished the Court House, and paid for it from bonds issued to him by the county, and he now denies that the appellee has any equitable claim upon the surplus proceeds of the bonds.

If an apology is needed for our failure to cite authorities in support of our conclusions as to the relative rights of the parties to this suit, it will be found in the circumstance, that if we have properly comprehended and stated the evidence, the proper legal rules to be applied are of such familiar and general application, as to suggest themselves at once, without being stated.

JOHN M. PALMER,

For Appellants.

113-585

Office Supreme Court U. S.
FILED.
DEC. 17 1884
JAMES H. McKENNEY.
CLERK.

THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1884.

No. 153.

ISAAC N. PIERCE AND ANDREW J. KUYKENDALL,

Plaintiffs in Error.

AGAINST

CHARLES I. HAM.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF ILLINOIS.

Brief and Argument for Defendent in Error.

SAMUEL P. WHEELER,

Attorney for Deft. in Error.

E. E. ELLIS, CITY PRINTER, CAIRO

THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1884.

ISAAC N. PIERCE and ANDREW J. KUYKENDALL,
Plantiffs in Error,
vs.
CHARLES I. HAM,
Defendant in Error.

Brief for Defendant in Error.

Statement of the Case.

The bill in this case alleges, that the county court of Johnson county, Illinois, on the 5th day of August, 1868, contracted with one Joseph K. Frick for the building of a court house at Vienna, the county seat of said county, agreeing to pay him therefor $38,357. in the bonds of said county. A copy of this contract is made an exhibit to the bill. That on the 9th day of September 1869, said Frick, by and with the consent and approval of the county court of Johnson county, assigned the said contract to the complainant, and the defendant Isaac N. Pierce, who were copartners under the firm name of Ham and Pierce. A copy of this assignment is also filed as an exhibit to the complainants bill. The bill also alleges that the complainant and defendant Pierce were equal partners. That they proceeded to the erection of the court house, as contemplated by said contract, and the furnishing of materials therefor under the direct supervision of the complainant, and had expended about

one thousand dollars, when they found that they could advantageously and with large profit to themselves sub-let said work to one Niles L. Wickwire, an experienced, competent and responsible builder. Thereupon they did, on or about the 8th of December, 1869, employ the said Niles L. Wickwire to erect and complete the said court house in all things in compliance with, and according to the terms, conditions and provisions of said original contract. That by the terms of their contract with Wickwire he was to receive $27,300 in the bonds of Johnson county, as provided for in said original contract, leaving to the firm of Ham and Pierce a surplus or profit of $11,057 upon the completion and acceptance of the building. That Wickwire built and completed the court house in all respects in accordance with his contract, and the same was accepted by the county court of Johnson county. That Wickwire was fully paid, and there then remained of bonds the sum of $11,057 belonging to the firm of Ham and Pierce, one half of which, in equity belongs to complainant. That at the making of the contract between the county court of Johnson county, and the said Frick, one Andrew J. Kuykendall became the security for said Frick, and executed a bond as such, to the county, conditioned for the faithful performance by said Frick of his contract. That for the purpose of indemnity to said Kuykendall, or for some other purpose of which the complainant is not advised, the said Frick constituted Kuykendall his attorney in fact, and as such he acted, making the assignment to Ham and Pierce, and generally acting in his behalf, the said Frick being a non-resident of the State of Illinois. That complainant believed Kuykendall would cease to so act, upon the assignment of the con-

tract to Ham and Pierce, but contrary to said belief, Kuykendall, after the completion and acceptance of the court house by the county court of Johnson county, entered into some arrangement with the defendant Pierce, if not for the purpose of defrauding, wronging and annoying said complainant, well calculated to do so, the said Kuykendall (claiming to act under the authority from the said Frick), to the effect that Kuykendall should receive from the county court the remaining bonds due for the building of the court house, and make some division thereof between Kuykendall and Pierce, paying the complainant nothing, which arrangement complainant charges was and is corrupt, wrongful and fraudulent That in complainants absence, Pierce and Kuykendall went before the county court of Johnson county, and Kuykendall claiming to be the agent and attorney of Frick, and well knowing that Frick had no interest in the balance remaining due, as such agent and attorney, demanded and received the bonds, after representing to said court that they could recognize no one in the transaction but Frick. That by means of the said false and fraudulent representations, and the acquiesence of complainants partner, Pierce, therein, the bonds were delivered to Kuykendall, and that in equity he received them in trust for the firm of Ham and Pierce. The prayer is for an account, and that the defendant be decreed to pay to complainant the amount due him, for his share of the profits.

Both Pierce and Kuykendall have answered the bill, but not under oath. They both admit the making of the contract between Frick and the county, the assignment of this contract by Kuykendall as the attorney for Frick to the firm of Ham and Pierce, and also the making of

the contract between Ham and Pierce and Wickwire, as stated in the bill. It is also admitted by the answers, that Kuykendall received from the county the full amount of the original contract price. They both deny that any division of the proceeds was made between them, but that Pierce was retained by Kuykendall to assist in negotiating the bonds, and on that account and perhaps some others not recollected of a purely business private character between Pierce and Kuykendall, the latter may have, and as Pierce recollects did, pay him some of the bonds obtained from Johnson county—but the amount is not recollected. The defendants set up in their answers that by the provisions of the contract between Ham and Pierce and Wickwire, that five thousand dollars cash was to be advanced him. That after the contract was made, Wickwire visited Vienna to obtain the five thousand dollars, and complainant being absent, and his whereabouts unknown, although, the complainant had promised to see to raising and providing the five thousand dollars for Wickwire, Pierce was greatly embarrassed as to what to do, but begged time of said Wickwire, and endeavored to provide the money and to communicate with the complainant, but failed in accomplishing either result. Finally, sometime in the early part of March, 1870, Wickwire refusing to go to work under his contract with Ham and Pierce unless said advance of five thousand dollars was paid him, and Pierce being unable to get said sum of money, or hear from complainant, was compelled to and did rescind, annul and cancel said contract made between Ham and Pierce and Wickwire, and surrendered the written memorandum thereof to Kuykendall for destruction and also rescinded, cancelled and annulled the assignment from Frick to Ham and Pierce.

To these answers a replication was filed.

On a hearing of the cause, the Court entered a decree in favor of the complainant for $5001.

The following facts are established by the record.

On the 5th of August 1868 a contract was entered into between the county of Johnson and Joseph K. Frick, for the building of a court-house at Vienna the county seat of said county. For this work the county agreed to pay Frick $38,357 in county bonds.

On the 9th of September 1869 Frick, with the consent of the county court of Johnson county, assigned this contract to Ham and Pierce, a co-partnership, composed of the complainant and the defendant Isaac N. Pierce, and organized for the single enterprise of taking this contract, and building the court-house. In making this assignment, Frick acted by the said Kuykendall his attorney in fact, constituted for the purpose.

That the county was to pay the contract price in four equal installments of bonds, viz, one at the sealing and delivery of the contrast, one when the work should be half done, one when the work should be three-fourths done, and the last when the work should be completed, each installment amounting to $9,598.25.

That before accepting the assignment, certain modifications on the specifications were suggested by Ham, who was a practical builder, materially lessening the cost, but in no wise affecting the utility of the building. These modifications were adopted by the county court, and thereupon the contract was assigned to Ham and Pierce and accepted by them. At the same time, bonds amount-

ing to $9,589.25, which had been delivered to Frick when the contract was delivered, were turned over to Ham and Pierce and went into the custody of Pierce.

That immediately thereafter, Ham and Pierce (Ham giving his personal attention thereto) commenced active operations, made excavations for the foundation, and gathered material for the building, but finding they could advantageously sub-let the work and thereby make a large profit, they, on the 8th of December 1869 made the following contract with Niles L. Wickwire.

" An agreement of two parts made this eighth (8) day of December, in the year eighteen hundred and sixty-nine, by and between Niles L. Wickwire, of Cairo, Illinois, party of the first part, and Isaac N. Pierce, and Charles L. Ham, of Vienna, Illinois, under the firm name of Ham and Pierce, of the second part:

" The said party of the first part, in consideration of the sum of money to be paid by the said party of the second part, as hereinafter mentioned, and the covenants and agreements hereinafter recited to be kept and performed by the said party of the second part, does hereby covenant, promise and agree to and with the said party of the second part that the said party of the first part shall and will in a good and workmanlike manner, and according to the best of his art and ability, do and perform the following work, and provide all necessary labor and materials for the same, that is to say : For a court house to be erected at the town of Vienna, Johnson county, State of Illinois. The whole of said work is to be performed and all the said materials furnished in conformity with the plans and specifications of the same made by Meriam and Nocquet, architects, of Chicago, Illinois, and amended by the county court of Johnson county, Illinois, and under the direction of a superintendent appointed by the said county court of Johnson

county, which plans and specifications, as amended, are to be considered as forming a part of this agreement, as if herein fully written and drawn.

"The said party of the first part further agrees that the work aforesaid shall be completed on or before the first day of November eighteen hundred and seventy, and furthermore that no charge of any kind shall be made by the said party of the first to the said parties of the second part beyond the sum hereinafter mentioned to be paid for said work, unless the said party of the second part and the said superintendent shall alter the aforesaid plans and specifications, in which case the value of such alterations shall be added to the amount to be paid under this contract, or deducted therefrom as the case may require, it being expressly understood that no extra work of any kind shall be performed, or extra materials furnished by the said party of the first part unless first authorized by the said parties of the second part and the said superintendent in writing, and that the said parties of the second part and the said superintendent may from time to time make any alterations of, to and in the said plans and specifications upon the terms aforesaid.

"The said parties of the second part in consideration of the materials being furnished and the labor done as herein required, and all other of the stipulations, requirements, matters and things herein set forth being kept and performed by said party of the first part, covenant, promise and agree to and with the said party of the first part, that they will well and truly pay or cause to be paid unto the said party of the first part the sum of twenty-seven thousand three hundred dollars ($27,300.00) in the manner following. The aforesaid amount to be paid in county bonds in the said Johnson county, in four equal installments, the first on the commencement of the work the second when one-third of the work shall be accomplished, the third when three-fourths of the work shall be

accomplished, and the fourth and final payment when the work shall be wholly completed and accepted by the county court of the said Johnson county, the party of the first part giving good and sufficient security for the proper application of all money or bonds advanced in payment for said work.

And it is hereby further agreed that if at any time during the progress of the work it shall become manifest to the superintendent or the party of the second part that said work is not being carried forward with sufficient rapidity or thoroughness, or that the labor and material furnished by the party of the first part are unsatisfactory and insufficient for the completion of the work within the time and in the manner stipulated in the plans and specifications aforesaid, they shall give notice of such insufficiency and defects in progress of materials to the party of the first part, and if within three days thereinafter such insufficiency and defects are not remedied, the party of the second part may enter upon the work and suspend or discharge said party of the first part and all employed under him, and carry on and complete the work as they may elect, and the expense thereof shall be chargable to the said party of the first part and be deducted from any sum which may be due him. And the opinion of the aforesaid superintendent shall be final and his certificate in writing conclusive evidence between the parties hereto on all questions and issues arising out of this article of this agreement.

In witness whereof, the parties aforesaid have hereto set their hands and seals the day and year first above written, to this and one other instrument of like tenor and date.

N. L. WICKWIRE, [Seal:]
CHAS. I. HAM, [Seal.]
I. N. PIERCE, [Seal.]

Executed and delivered in presence of S. P. PEABODY.
Cairo, Ill., Dec. 8, 1869.

" It is further mutually agreed and understood by the parties hereto that the party of the first part shall take all material furnished, and pay for all labor performed by the parties of the second part, prior to this date, at actual cost to the said parties of the second part."

That soon after the making of this contract, Ham, who was a railroad contractor, went to Indiana and engaged in some work there, leaving Pierce at Vienna, where he resided, and also leaving with him the $9,589.25 in county bonds, besides some interest collected on them, Pierce agreeing to pay over to Wickwire the $6,825, in bonds due him, and to draw the installments as they should fall due, and likewise turn over to Wickwire the amounts due him from time to time.

That Wickwire went to Vienna for the purpose of preparing for the work, and Pierce talked discouragingly to him, falsely represented that he had nothing with which to make the payment according to the contract and Wickwire returned to Cairo where he resided, undecided what to do. At this juncture Pierce called Kuykendall in. He lived in Vienna also, and was fully advised of the condition of the business. He knew that Pierce had the bonds of the county, amounting to $9,589.52

for he had delivered them as the attorney in fact of Frick. Pierce stated to Kuykendall, that they could not go on with the work, because of the lack of funds. Thereupon Pierce and Kuykendall, without the consent of either Ham or Wickwire, attempted to rescind the contract between Ham and Pierce, and Wickwire, and also attempted to rescind the assignment from Frick to Ham and Pierce. It does not

appear, that anything in this direction was done, except as stated by Kuykendall in his evidence, that Pierce handed the contract to Kuykendall, and he (Kuykendall) handed it back to Pierce for safe keeping.

That Wickwire went forward and completed the court-house according to his contract with Ham and Pierce; receiving the exact amount specified therein. That he was paid largely in merchandise from the store of Pierce as the work progressed, received money from Pierce to some extent, and at the final settlement received in county bonds $7,500.

That Kuykendall received from the county all the bonds, but by what authority does not appear, except that it was with the consent of Pierce. That a division was made between Kuykendall and Pierce of the profits, and Pierce received $4,700 in county bonds, and $200 in cash, Kuykendall retaining the balance.

It also appears that Kuykendall assisted Pierce in negotiating some of the bonds. Kuykendall says he does not recollect the amount or the price, as it was done on the street and he kept no account, but deducting the bonds taken by Wickwire and Pierce, those used in paying for material, and those which Kuykendall says he retained, leaves less than $15,000, negotiated by anyone. Kuykendall, in stating his account asks the court if he is held as trustee to allow him the modest sum of $3,765.50 for this service, and that all of it be taken from Ham's share of the profits.

It also appears that in the latter part of May 1870 when Wickwire had the walls of the court-house well

under way, Pierce visited Ham near Terre Haute, where he was at work, and asked Ham to admit Kuykendall to a third interest in the enterprise, and that Ham declined doing so, and after the work was completed and final settlement made with Wickwire, Pierce stated that he had told Ham he should have his share of the profits in the court-house contract.

I.

Ham, it seems, had been a contractor on the Cairo and Vincennes Railroad, and his work was in Johnson County. Work had been suspended, and Ham was indebted to various citizens of that county, on account of work or materials. To enable them to obtain their money he made an assignment of a sufficient amount of prospective profits to meet these debts. There was no attempt to assign all right, title and interest in the partnership property and effects. This act was simply an appropriation of a sufficient amount of the profits to pay his debts, when this should be ascertained after the work was completed.

After Kuykendall prevailed on the county court to issue the bonds to him, by asserting that none but Frick could be recognized as entitled to them, Ham came forward and paid his indebtedness, and the assignment was taken up. It appears that neither Pierce or Kuykendall knew anything of this assignment until the work was completed, hence their conduct was in no way influenced thereby.

It is, however, claimed that this act worked a dissolution of the firm of Ham and Pierce.

The text of Story on Partnership, section 307 is :

"As to dissolution by voluntary assignment, by one or more of the partners, of all his right, title and interest in the partnership property. It seems now well established at the common law, that if one partner does make such a voluntary assignment of all right, title and interest in the partnership property and effects, that it will at once dissolve the partnership and convert the assignee or purchaser into a tenant in common with the other partners."

Ham could make no assignment of all his interest that would work a dissolution of the partnership. It was formed for a single adventure or enterprise, and would continue until that object was attained.

Parsons on Partnership, 2nd Ed. Star, p. 384.

This partnership, then, had a limitation. It could be dissolved by a court of competent jurisdiction, for cause. The conviction of one of the partners of a felony might dissolve it. A sale or assignment by one partner to the other would dissolve the partnership, for the assent would exist.

"It may be an accurate expression of the rule to say that no partner has a right to transfer the whole of his interest in the partnership stock to a stranger, unless he has a right to dissolve the partnership."

Parsons on Partnership, 2nd Ed. Star, page 169.

Where the assignment is as security for a debt, and it was agreed that the assignee should continue in business, held that the partnership was not dissolved.

Buford v. Neeley, 2nd Div. Eq. 481.

The question whether one partner may, by his own mere will dissolve a partnership formed for a definite purpose or period, has been much discussed in this country and England. That there is no such power seems well settled.

Peacock v. Peacock, 16 Ves. 57.

Crawshay v. Maule, 1 Swanst, 508.

Wheeler v. Van Wart, 9 Sim, 193.

Pearpont v. Graham, 4 Wash, C. C., 232.

I insist, then –

1. There was no assignment of any present interest in the firm property. At most it was contingent upon the enterprise proving successful, and producing a profit.

2. It was so understood, treated and acted upon by the parties to it.

3. Ham could not of his own will, dissolve the partnership.

4. The conduct of Pierce was not placed upon the ground that Ham had made the alleged assignment, for he was ignorant of its existence.

II.

The claim set up that the assignment of the contract by Frick to Ham and Pierce and also the contract between Ham and Pierce, and Wickwire, were rescinded by

Pierce, without the consent of either Ham, Wickwire or the county, if true, presents no reason in equity, why complainant should not have the relief prayed for.

This claim, however, is evidently made for the lack of something better. It can produce but one impression that it was purely an afterthought, conceived when too late to arrange the details. If Pierce conducted this business as is now claimed, he clearly did so in fraud of his partner's rights, and Kuykendall was fully informed of this fraud. He claims to have been acting for Frick, but it does not appear that Frick profited by the arrangement. He divides the profits with Pierce, and retains the balance.

The work was done by Wickwire under the contract he made with Ham and Pierce and according to the modified specifications suggested by Ham, and not under the contract of Frick. If the Wickwire contract was cancelled, then the work should have been done according to the specifications originally adopted. All these attempts are but transparent frauds.

The first and highest duty which partners owe to each other is that of perfect good faith. Partners are in the power, or at the mercy of each other; hence there is no relation in life, calling either by its own exigencies or the rules of law, for more absolute good faith than the relation of partnership.

Parsons on Partnership 2nd Ed. star page 223.

It may be admitted that one partner may *sell* the whole of the partnership property, *if the sale is free from fraud on the part of the purchaser.* Both the seller and buy-

er must act in good faith. Kuykendall was fully advised of all the circumstances attending this business. He knew that the partnership between Ham and Pierce extended to nothing except the contract for building the court-house. They had no property in the true sense of the word All they had was a prospective gain when the house should be completed under the Wickwire contract. Any act of Pierce looking to any other result was entirely foreign to the usual course of the business of the firm.

Each partner is limited to transactions for the firm within the scope of its business—to the transaction of business in the usual way—to the course of the partnership business.

Parsons, on Partnership, Star, p. 171, and Note V.

"And if a contract be made by one partner in the name of the firm, with a stranger, if the transaction is foreign to the usual course of dealng with the firm, this circumstance lays on the stranger the duty and responsibility of inquiring and ascertaining whether the partner has the authority of the firm."

Ibid. Star, page 175 and Note XX.

In this case Kuykendall had everything to gain, and nothing to lose, hence he was willing to join Pierce in the scheme to defraud his partner. Whatever the firm had was not sold, but the act of Pierce was an attempted surrender, without any consideration.

Notwithstanding the power of disposal which each partner possesses with respect to joint property, he cannot give it away.

Daniel v. Daniel, 9. B. Mon, 195.

III.

It is contended that Pierce had the authority to sell the partnership property, because his partner was absent, and in another state. Concede that he sold it for the sake of the argument, still he and the buyer must have acted in good faith. Because Ham was in Indiana his partner did not have any right to defraud him. He had no more right to perpetrate a fraud upon his partner in his absence than if he had been present. The consequences must be the same in both cases.

Ham was not more than one hundred and fifty miles away. He was written to on other subjects. Pierce had no difficulty in seeing him two or three months later when he wanted to have Kuykendall admitted to the partnership. The truth seems forced upon us that neither Pierce or Kuykendall wanted Ham to know what they were doing, and the facts were withheld from Ham at the time Pierce visited him in Indiana.

The origin of the doctrine, that one partner may sell the partnership property, if seller and buyer act in good faith, without consulting the other partner, is found in the fact that one partner might be absent in a foreign country, and by reason of the exigencies of the case could not be consulted in time to meet the emergency. It was never intended as a means whereby gross and glaring frauds might be perpetrated.

"Where all the partners are present, they have a right to be consulted in giving preference to particular creditors. But it is otherwise if one of them is absent in a foreign country."

Anderson v. Tomkins, 1 Brock, 456.

"Two of three partners of an insolvent firm, cannot make an assignment of all the partnership property with preference, against the dissent of the remaining partner who is absent, but where he might be consulted without unnecessary delay."

Bowen v. Clark, 5, Am. L. R., 203.

The principle extracted from a large number of cases examined is, that all the partners should be consulted and their assent obtained to the transfer if it can be done without unnecessary delay. This is the course naturally suggested, in view of the rights to be effected. Every case must, however, to some extent, depend upon its own circumstances. There can be no arbitrary rule for all. The distance between the parties must be taken into consideration, as well as the facilities for travel, and the interchange of communications.

It is a complete answer to all that may be said on this subject, that the recision of these contracts, if ever made, was in bad faith.

The interest this firm possessed in the court house contract, and this was all they had, cannot be likened to a stock of merchandise, nor to goods and chattels used by a firm in the prosecution of the joint business. It was not in any sense stock in trade, or subject to bargain and sale.

IV.

By the terms of the contract with Wickwire, he was to be paid in bonds $27,300. These payments were to be

made in the same manner as the payments to Ham and Pierce, with the single exception that Wickwire's first payment was to be made when he commenced work. All that Pierce was required to do was to pay Wickwire $6,823, in bonds. To meet this he had $9,589.25 in bonds turned over to him by Kuykendall when the contract was assigned. As the work progressed a like sum could be drawn and Wickwire paid. Kuykendall admits the receipt of all the bonds, with the exception of $700, which amount he claims Frick used before the assignment, also the receipt of $930 interest earned on bonds The evidence all shows that these bonds sold readily at 90 cents—indeed, that is established as the market value of them. The account would then stand thus—

Whole Amount bonds - - -	$38,357
Less Amount used by Frick - -	700
	$37,657
Deduct Am't Wickwire Contract	27,300
Bonds' Profit on Enterprise -	$10,357
This Am't, $10,357, at 90 cts. -	$ 9,321.30
Add interest collected - - -	930
Profits in Cash - - -	$10,251.30
One-half due Ham - - -	$5,125.65
Interest at 6 per cent to date decree	2,460.31
Amount due Ham - - -	$7,585.96

Pierce in his evidence says that Kuykendall agreed to give him half the profits, and Kuykendall testifies that he did pay "to Isaac N. Pierce of the firm of Ham and Pierce" $4,700 in bonds, and $200 in cash. With respect to this Kuykendall states in his answer that "he employed said Isaac N. Pierce to assist him in making said negotiations, and said Pierce, who was then in the mercantile business, also became paymaster for many of the employees of said Wickwire, while he was constructing and building said court-house" He further says in his answer, "Respondent did let said Pierce have some of said bonds, the amount not now recollected" &c. Pierce in his answer states, "and respondent was also retained by his co-defendant Kuykendall to assist in negotiating the bonds as aforesaid, and on the account of these two items, and perhaps some others not now recollected, of a purely business, private character between the respondent and the said Kuykendall, the latter may have, and as respondent recollects did pay to respondent some of the bonds so obtained by him from Johnson county aforesaid, but the amount thereof is not now recollected by respondent."

It seems strange that the payment and receipt of nearly five thousand dollars should be so lightly treated. The answers however were not under oath, while their testimony was.

On an examination of the whole record, but one conclusion can be reached, that Wickwire carried on the work and completed it under his contract with Ham and Pierce, and that Pierce did precisely what he should have done in paying for the work, and profiting in his store by selling merchandise to the workmen.

Wickwire is asked the following question as shown by the record:

"Interrogatory 12.

"What time did you receive the first payment for work on the court-house?

"Answer.

"I received no payment directly. I gave orders on Mr. Pierce from time to time, as the work progressed. He acted as cashier in paying out money for work. I received no direct payment of any considerable amount until the work was completed. The balance then due me I received in bonds."

It is difficult to understand how Kuykendall had any interest in the business. At most he simply told Wickwire he would guarantee him 90 cents for the bonds. This seems to be what they readily sold for, hence he risked nothing—lost nothing. The bonds were so marketable at that figure, that Wickwire took in the final settlement $7,500, without any claim on Kuykendall. This guaranty might have been made by Kuykendall, as a friendly act to Pierce, or as a citizen having in view the public good.

The whole truth is simply this. After Ham had secured the modification of the specifications, thus enabling him to make the contract with Wickwire, insuring a handsome profit, Pierce was anxious to oust Ham and put Kuykendall in the way of making the share that otherwise would be Ham's. They were neighbors and friends of long standing. Kuykendall seems to have had great influence over Pierce, and the two deliberately set

about the accomplishment of this design. That their conduct was a fraud upon Ham seems too clear for argument. It is equally clear they so intended it. The decree might well be for a larger amount and ought to be affirmed.

SAMUEL P. WHEELER,

Attorney for Defendant in Error.